DURHAM UNIVERSITY

MULTILATERAL VERSUS BILATERAL TRADE: POLICY CHOICES FOR OMAN

(VOLUME II: APPENDICES)

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LIST OF APPENDICES (VOLUME TWO)

Appendix 1.1: The family of the WTO agreements

Type of agreement	The Agreement	Contents
Multilateral/ Goods	GATT 1994	a) GATT 1947; i.e. the original GATT with its amendments as it stands up to 31 December 1994. b) Decisions taken under GATT 1947 up to 31 December 1994; c) Understandings reached in the Uruguay Round in six areas; namely other duties and charges, state trading enterprises, balance of payments provisions, customs unions and free-trade areas, waivers of obligations, and tariff modification d) Tariff schedules and the manner of implementation of these schedules as agreed to in the Uruguay Round
Multilateral/ Goods	Other agreements in the area of goods	Other agreements in the area of goods; namely the twelve agreements covering the areas of: Agriculture, Sanitary and Phytosanitary Measures, Textiles and Clothing, Technical Barriers to Trade, Trade-Related Investment Measures, Anti-dumping, Customs Valuations, Pre-shipment Inspections, Rules of Origin, Import Licensing, Subsidies and Countervailing measures, and Safeguards.
Multilateral/ Services	General Agreement on Trade in Services (GATS)	The Agreement itself, its Annexes including members Schedules of Specific Commitments.
Multilateral/ Goods and Services	Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)	
Multilateral	Trade Policy Review Mechanism	
Multilateral/ Plurilateral	Understanding on the Settlement of Disputes (DSU)	
Plurilateral	Civil Air Crafts	Note: There used to be four plurilateral agreements in areas of government procurement, civil aircraft, bovine meat, and dairy. However, at the end of 1997, the WTO decided to end the two agreements on bovine meat and dairy for their contradiction of the Agreement on Agriculture (WTO, 2005a).
Plurilateral	Government Procurement	

Source: WTO (1995A). Legal Texts.

Appendix 1.2: Ministerial Conferences since 1995 and their main results/declarations

Table A.1.2: Details on the First MC in Singapore.

Number of the Ministerial	The First
Place	Singapore
Date	9-13 December 1996
Main decisions/issues of the declaration	
Labour	- The International Labour Organization (ILO) is the competent body to set and deal with labour standards. - Labour standards must not be used for protectionist purposes. - The comparative advantage of countries, particularly low-wage countries must not be put into question.
Regional trade agreements	- Reaffirming the primacy of the multilateral trading system and ensuring that regional trade agreements are complementary to it and consistent with its rules. - Welcoming and endorsing the establishment of the Committee on Regional Trade Agreements.
Developing and least-developed countries	- Recognising the importance of providing technical assistance for developing and least-developed countries.
Textiles	- Emphasising the importance of full implementation of the Agreement on Textiles and Clothing and the full integration of this sector in the GATT 1994.
Environment	- The Committee on Trade and Environment shall continue to examine the scope of complementarities between trade liberalisation, economic development, and environmental protection.
Services	- Recognising the difficulties facing the negotiations on the improvement of market access in services. - Extending their deadlines such as for the basic telecommunications to be concluded in February 1997 and negotiations for financial services to be resumed in April 1997.
Investment	- Establishing a working group to examine the relationship between trade and investment.
Competition policy	- Establishing a working group to study the interaction between trade and competition policy, including anti-competitive practices.
Transparency in government procurement	- Establishing a working group to conduct a study on transparency in government procurement practices.

Source: Compiled by the author from (WTO, Singapore Ministerial Declarations, 1996a).

Table A.1.3: Details on the Second MC in Geneva.

Number of the Ministerial	The Second
Place	Geneva
Date	18-20 May 1998
Main decisions/issues of the declaration	
Services	- Welcoming the successful conclusion of the negotiations on basic telecom and financial services.
Information Technology Agreement	- Noting the implementation of the Information Technology Agreement. (The ITA obliges members to completely eliminate duties on IT products covered by the Agreement. Developing countries were granted extended periods for some products).
Developing and least-developed countries	- Recognizing the needs of developing and least-developed countries. - Welcoming the work achieved by the Committee on Trade and Development for reviewing the application of special provisions in the multilateral trade agreements and related ministerial decisions in favour of developing and least-developed countries.
Implementation	- Emphasising the necessity of full implementation of the WTO and Ministerial Decisions for the credibility of the MTS. - Further pursuance of full evaluation of the implementation of individual agreements and the realisation of their objectives shall be made in the third session (Seattle MC). - The General Council shall establish a process to ensure full and faithful implementation of existing agreements and to prepare for the third session with sets of recommendations on how to follow-up members' implementations.
Global electronic commerce	- Assigning the General Council with the task of establishing a comprehensive work programme to examine all trade-related issues relating to global electronic commerce. - The programme should take into account the economic, financial, and development needs of developing countries. - Meanwhile, members shall continue their current practice of not imposing customs duties on electronic transmissions.

Source: Compiled by the author from (WTO, Geneva Ministerial Declaration,1998).

Table A.1.4: Details on the Third MC in Seattle.

Number of the Ministerial	The Third
Place	Seattle
Time	30 November – 3 December 1999
Main decisions/issues of the declaration	
No progress	- Seattle Conference was meant to launch a new millennial round of trade negotiations. - But due to wide disagreements between members the Ministerial failed. - The conference ran out of time without any progress on the negotiating agenda or agreeing about declaration. - The Directorate General shall consult with delegations to find creative means to bridge the differences and move the negotiations forward. - Massive and controversial street protests accompanied the Ministerial negotiations.

Source: Compiled by the author from (WTO, Seattle Ministerial Conference, 1999b).

Table A.1.5: Details on the Fourth MC in Doha.

Number of the Ministerial	The Fourth
Place	Doha
Time	9 – 14 November 2001
Main decisions/issues of the declaration	
Labour	- Reaffirming the Singapore MC declarations regarding internationally recognised core labour standards.
Doha Work Programme	- Agreeing to undertake broad and balanced Work Programme which incorporates an expanded negotiating agenda and other important decisions.
Implementation-related issues	- Recognising the importance of the implementation-related issues. - Adopting the GC's decision on implementation-related issues. - Negotiations on outstanding implementation issues shall be made an integral part of the Work programme according to the specified mandate of the declaration. - Other outstanding implementation issues shall be addressed by the relevant WTO bodies which shall report to the Trade Negotiations Committee by the end of 2002.
Agriculture	- Committing to comprehensive negotiations on agriculture liberalisation aiming at substantial improvements in market access, phasing out all forms of export subsidies, and reduction in trade distorting domestic support. - Special needs of developing countries including food security and rural development shall be taken into account in the negotiations. - Modalities for further commitments, including provisions for special and differential treatment, shall be established no later than 31 March 2003. - Members shall submit their comprehensive draft Schedules based on these modalities no later than the date of the Fifth Session of the MC.
Services	- Recognising all the previous works achieved in services negotiations. - Members are required to submit requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003.
Market access for non-agricultural products (NAMA)	- Negotiations shall aim to reduce and eliminate tariffs and non-tariff barriers on non-agriculture products. - Negotiations shall take special account of the special needs of developing and least-developed countries.
Trade-related aspects of intellectual property (TRIPS)	- The TRIPS Agreement shall be implemented in a way that promotes access to existing medicines and research and development into new medicines. - Agreeing to negotiate the establishment of a multilateral system notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. - Issues related to the extension of the protection of geographical indications to products other than wines and spirits will be addressed in the Council for TRIPS. - The Council for TRIPS is instructed to examine the relationship between the TRIPS Agreement and the Convention on Biological diversity, and the protection of traditional knowledge and folklore.

Relationship between trade and investment	- Agreeing that negotiations will take place after the Fifth Session of the MC on the basis of a declaration to be taken, by explicit consensus, at that session on modalities of negotiations. - Negotiations framework should consider the interests of home and host countries and consider the development policies and objectives of host governments and their right to regulate public interests.
Dispute settlement	- Agreeing to negotiations on improvements and clarifications of the Dispute Settlement Understanding no later than May 2003.
Trade and environment	- Agreeing on negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). - Negotiations shall also include the reductions or elimination of tariff and non-tariff barriers on environmental goods and services. - Committee on Trade and Environment (CTE) is instructed to give special attention to the effect of environmental measures on market access, especially in relation to developing and least developed countries. - Recognising the need of developing and least-developed countries for technical assistance in the field of trade and environment.
Fisheries	- Negotiations shall aim to clarify and improve WTO disciplines to developing countries
Electronic commerce	- Agreeing to continue the Work Programme on Electronic Commerce. - The GC is instructed to consider the most appropriate institutional arrangements for handling the work programme and to report on further progress to the Fifth Session of the MC. - Meanwhile, members will maintain their current practice of not imposing customs duties on electronic transmissions until the Fifth Session.
Deadlines	- Doha negotiations shall be concluded no later than 1 January 2005. - The Fifth Session of the MC will take stock of progress in the negotiations, provide any necessary political guidance, and take the necessary decisions.
Management of the negotiations	- The negotiations shall be supervised by the Trade Negotiations Committee (TNG) under the authority of the General Council.
Single Undertaking	- With the exceptions of the improvements and clarifications of the DSU, the conduct, conclusion and entry into force of the outcome of the negotiations shall b treated as parts of a single undertaking (i.e. every single item of the negotiations is part and parcel of an overall package that can not be agreed about separately).

Source: Compiled by the author from (WTO, Doha Ministerial Declaration, 2001).

Table A.1.6: Details on the Fifth MC in Cancun.

Number of the Ministerial	The Fifth
Place	Cancun - Mexico
Time	10-14 September 2003
Main decisions/issues of the statement	
Not enough progress	- Due to disagreements between developed and developing countries over many issues in the DDA, Ministers failed to reach a final conclusion of the negotiations. - More works need to be done.
Further directions	- The Chairman of the General Council in cooperation with the Director-General shall convene a meeting of the General Council at Senior Officials level no later than 15 December 2003 to take the necessary actions to make the negotiations move forwards towards a successful conclusion. - Despite the setback, Ministers reaffirm their commitments towards completing DDA.

Source: Compiled by the author from (WTO, Cancun Ministerial Conference, 2003a).

Table A.1.7: Details on the July Package.

A special event	The July Package (agreed by the General Council)
Place	Geneva
Time	July 2004 – Officially adopted on 1 August 2004.
Main decisions/issues of the statement	
Initiative	- After the failure of Cancun MC, the GC intensified its effort to put negotiations on the Doha programme back on track. - Based on a proposal offered by the USTR Robert Zoellick in early 2004, the GC managed in July 2004 to reach a more confined framework agreement on DDA. - July Package is known as a "Framework Agreement" and provides guidelines for completing the Doha Round negotiations.
Agriculture	- The GC adopts the Framework for Establishing Modalities in Agriculture that is set out in Annex A to the document of the July Package.
Cotton	- The GC reaffirms the importance of the sectoral initiative on cotton and the importance of cotton for the developments of some countries. - According to Annex A, cotton will be specifically addressed within the agriculture negotiations. - A special subcommittee on cotton will be established and will meet periodically and report to the Special Session of the Committee on Agriculture to review progress.
Non-agricultural market access (NAMA)	- The GC adopts the Framework for Establishing Modalities in Market Access for Non-Agriculture Products that is set out in Annex B to the document of the July Package.
Technical assistance	- The GC affirms the importance of providing developing and least-developed countries with enhanced trade-related technical assistance (TRTA) and capacity building to increase the effectiveness of their participation in the negotiations, facilitate their implementation of the WTO rules, and enable them to adjust and diversify their economies.
Services	- The GC reaffirms members' commitments to make progress in this area. - Revised offers should be tabled by May 2005.

TRIPS and trade and environment	- The GC reaffirms members' commitment to make progress in all these areas of negotiations in line with Doha mandate.
Dispute settlement	- The GC reaffirms members' commitment to make progress in this area of negotiations in line with Doha mandate.
Trade facilitation	- The GC decides by explicit consensus to commence negotiations on the basis of modalities set out in Annex D to the July Package.
Relationship between trade and investment, interaction between trade and competition policy and transparency in GP	- The GC agrees that these issues will not form part of the Doha Work Programme. Thus, no work towards negotiations on any of these issues will take place within the WTO during the Doha Round.
Deadlines	- The GC abandoned the 1 January 2005 deadline for the negotiations as set out in Doha declaration. - Instead, the GC agrees to continue negotiations launched at Doha beyond the timeframe set out in the Doha Declaration, leading to the Sixth Session of the MC in Hong Kong (December 2005).

Source: Compiled by the author from (WTO, July 2004 Package, 2004).

Table A.1.8: Details on the Sixth MC in Hong Kong.

Number of the Ministerial	The Sixth
Place	Hong Kong
Time	13-18 December 2005
Main decisions/issues of the statement	
Re-commitments	- Reaffirming Doha declarations and July package. - Renewing commitment to conclude the Doha negotiations successfully in 2006.
Agriculture	- Reaffirming commitment to the mandate on agriculture as set out in Doha declaration and July Package. - Agreeing that elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013. This date will be confirmed only upon the completion of modalities. - Disciplines on export credits, export credit guarantees or insurance programmes, exporting state trading enterprises and food aid will be completed by 30 April 2006 as part of the modalities. - On market access, Ministers adopt four bands for structuring tariff cuts, but they need to agree on the relevant thresholds, including those applicable to developing countries.
Cotton	- Recalling the GC decisions to address cotton within the agriculture negotiations. - Reaffirming commitments to reach an explicit decision on cotton within agriculture negotiations and through the Sub-Committee on Cotton where: - a) all forms of export subsidies for cotton will be eliminated by developed countries in 2006, - b) on market access, developed countries will give duty and quota free access for cotton exports from least-developed countries (LDCs) from the commencement of the implementation period. - Members agree that as an outcome for the negotiations, trade distorting domestic subsidies for cotton production be reduced

	more ambitiously than under whatever general formula is agreed and that it should be implemented over a short period of time than generally applicable. - The Director-General is instructed to set up appropriate follow-up monitoring mechanism.
NAMA negotiations	- Reaffirming commitments of Doha declaration and July Package. - Adopting a Swiss Formula which shall: reduce or eliminate tariffs, particularly on products of export interest to developing countries, and take fully into account the special needs and interests of developing countries. - Instructing the Negotiating Group to finalise its structure and details as soon as possible.
Services negotiations	- Reaffirming the objectives of trade liberalisation in services in the GATS and all the efforts made in this area. - Special considerations shall be given to the interests of developing. - Determining to intensify the negotiations as stipulated in Annex C to the declaration, with a view to expanding the sectoral and modal coverage of commitments and improving their quality.
TRIPS negotiations	- Noting the progress made and agreeing to intensify these negotiations in order to complete them within the overall time-frame for the conclusion of the negotiations.
Trade and environment	- Noting the progress made and agreeing to intensify the negotiations to fulfill the mandate.
DSU negotiations	- Noting the progress made and directing the Special Session of the Dispute Settlement Body to continue to work towards a rapid conclusion of the negotiations.
E-commerce	- Agreeing to reinvigorate the work on this area. - Agreeing to maintain the current institutional arrangements for the work Programme. - Meanwhile members will maintain their current practice of not imposing customs duties on electronic transmissions until next session.

Source: Compiled by the author from (WTO, Hong Kong Ministerial Declaration, 2005b).

Table A.1.9: Details on the special mini Ministerial.

Number of the Ministerial	Special mini Ministerial
Place	Geneva
Time	21-29 July 2008
Main decisions/issues of the statement	
After Hong Kong	- Multilateral talks were held in Geneva (2006) and Potsdam (2007) with the aim to narrow the gap between developed and developing countries on the newly agreed negotiating agenda, especially on agriculture and market access. - However, such efforts were not effective enough, as disagreement between the U.S. and EU on one side and India and Brazil on the other side continued. - On 21 July 2008 negotiations started again in the WTO's HQ in Geneva and continued for nine days. - Around 40 Ministers attended the negotiations
Unfinished job	- The USTR Susan Schwab announced that the U.S. would reduce its farm subsidies to $15 billion a year from $18.2 billion in 2006, provided that countries such as Brazil and India drop their objections to various aspects of the round.

	- The U.S. and the EU also offered an increase in the number of temporary work visas for professional workers. - However, India and China pursued hard line negotiations particularly regarding tariffs and subsidies and the special protection for their farmers. - The U.S. criticised the China and India's inflexible negotiating stands. - Countries blamed each other for the collapse of the talks, which had been seen once on the verge of successful conclusion.
The status quo	- Efforts are still continuing to restart the negotiations. - But, with the current financial crisis, the changes in the U.S. Administration, and the end of the Trade Promotion Authority (given to the U.S. President to negotiate trade agreements without the Congress being able to amend them, but only to prove or disprove them), the directions of the Doha negotiations remain uncertain. - Lamy announced on 14 October 2008 that a task force within the WTO Secretariat was established to follow up the effects of the financial crisis on the different areas of WTO work.

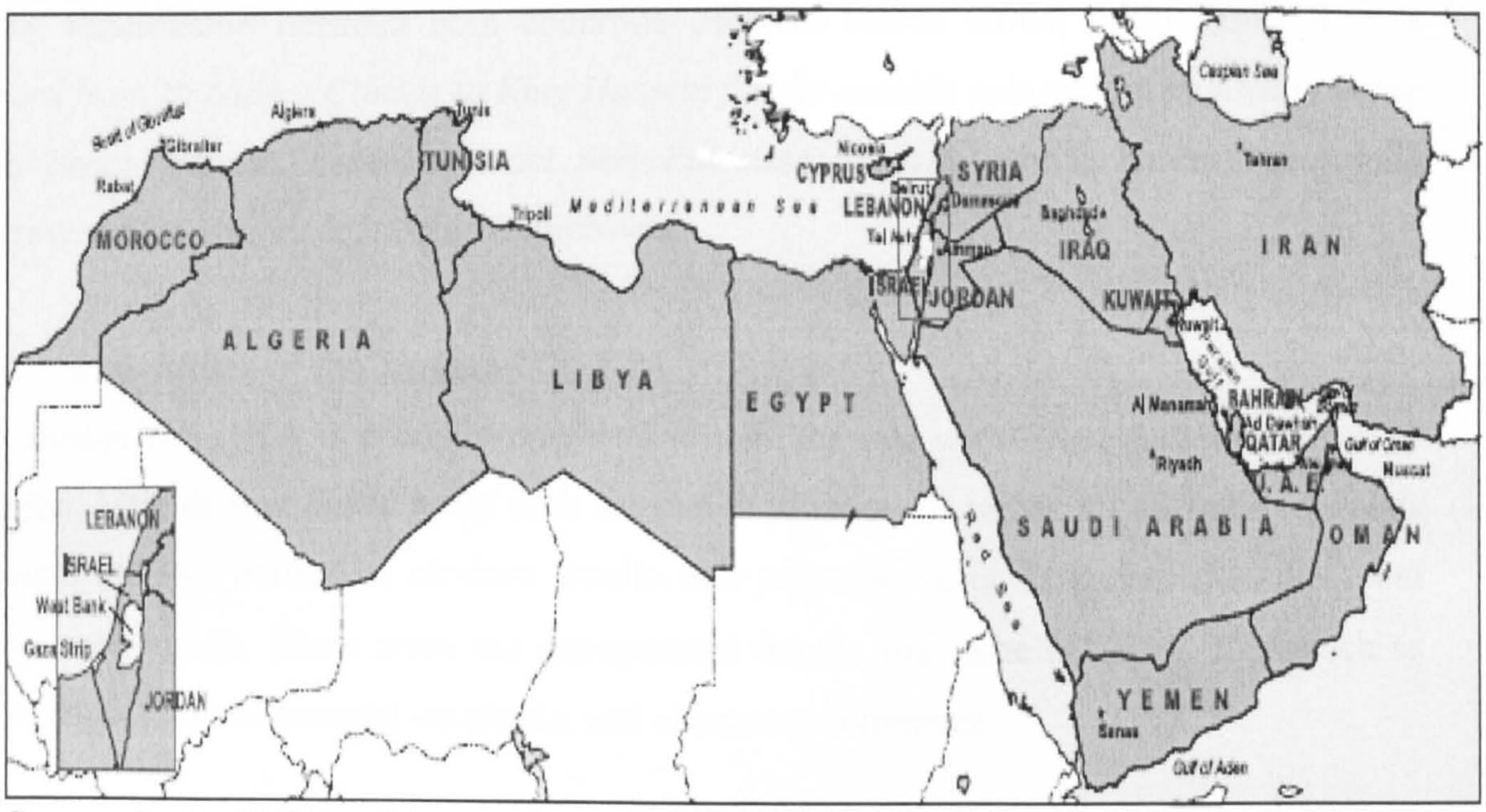
Source: Complied by the author from (International Centre for Trade and Sustainable Development, 30 July 2008; Lamy, 2008).

Appendix: 2.1: Different forms of preferential trade agreements

Type of PTA	Explanations
First stage: free trade area	Trade restrictions among member countries are removed, as the one between Oman and the U.S., but each member still retains its own tariff structure against outsiders.
Second stage: customs union	If a free trade area is characterised with common external trade policies, it becomes a customs union, as is the case of the Gulf Corporation Council (GCC) and South African Customs Union (SACU). Under customs union not only are all tariffs amongst member countries abolished, but they also have a single external tariff on goods imported from outside the customs union. Revenue generated by the customs union is shared by its members on a specific formula.
Third stage: common market	Besides the abolition of all tariffs between member countries and their common external tariffs on imports from other non-member countries, further free movement of factors of production are applied between member countries. These include free movement of labour and capital; i.e. no restrictions are applied on immigration, emigration, and cross border investment between member countries. The European Union (EU) and the Common Market for Eastern and Southern Africa (COMESA) are forms of common markets.
Fourth stage: monetary union	Monetary union is where members of a common market adopt common currency; i.e. they further agree to use a single currency or to fix their rates of exchange for their respective currencies. Examples of monetary unions are; the EU -- where most members have agreed to use the "euro" as a new single currency – and the East Caribbean dollar.
Fifth stage: economic union	Economic union integrates economic policies amongst member countries, including the monetary policies, economic policies, taxation and other regulatory requirements. Perhaps, the EU is the only obvious Economic Union at the current time.

Source: Hoekman &.Kostecki (2001, p.347).

Appendix 3.1: Entities included in the Middle East Free Trade Area (MEFTA)



Source: Bolle (2005, p.3).

Appendix 3.2: A review on the Jordan-U.S. Free Trade Agreement

1. Background: political and foreign policy emphasis

The Jordan – U.S. FTA was signed on October 24, 2000. It was the third FTA and the first ever with an Arab country signed by the U.S. The Jordan FTA entered into force on December 17, 2001. As is the case with Israel, clear emphasis was put on foreign policy, thus reflecting the U.S. linkage between trade and politics (Feinberg, 2003, Lindsey, 2003). As Jordan had always been a strong ally with the U.S., the FTA was described to reflect the strong relationship between both countries. Howard Rosen (2004, p.62) paints it as a *reward from President Clinton to King Hussein for the notable role played by Jordan in the Oslo peace process between Israel and Palestine*, through which Jordan's economic reforms and performance would be improved.

2. The nature of the Jordan-U.S. FTA

The Jordan-U.S. FTA is more comprehensive than the one with Israel and consists of 19 detailed Articles that cover areas such as; the elimination of tariffs on all trade in goods between the two countries, services, intellectual property rights, safeguard measures, and dispute settlement. Some areas are incorporated for the first time in a U.S. FTA such as labour rights, environmental standards, and electronic commerce.

2.1. Conventional areas; trade in goods, services and intellectual property rights

The first area is about tariff elimination. The Agreement, according to Article 2, calls for the elimination of tariffs on virtually all trade between the two countries within a ten-year period. The elimination will be achieved through four stages; (1) those tariffs of less than five percent will be eliminated within two years, (2) tariffs between five and ten percent, within four years, (3) tariffs between ten and twenty percent, within five years, and (4) tariffs above twenty percent, within ten years (USTR, 2000). The second area is trade in service where Jordan, according to Article 3, agreed to open its services market to U.S. companies. Specific liberalisation has been achieved in many key sectors, including educational, financial and health service sectors. The third area is the intellectual property rights, where Jordan agreed to ratify and implement the World Intellectual Property Organization (WIPO) Copy Treaty and the Performances and Phonograms Treaty within two years. The provisions of this area, as stated in Article 4 of the Agreement, incorporate the most updated international standards for copyright protection. They also include

guidelines for protection of copyrighted works in a digital network environment and protect exclusive right for the creators' work available online.

2.2. Safeguard measures and dispute settlement

The U.S.-Jordan FTA also includes provisions on safeguard measures (Article 10) and dispute settlement (Article 17). Although most disputes are to be handled through direct consultations between the two parties, the Agreement establishes a dispute settlement process. If consultations are unsuccessful after sixty days, either party can refer the issue to the joint committee, which is composed of representatives from both parties and designed to supervise the implementation of the Agreement. If the dispute is not resolved by the joint committee within 90 days, the parties can appoint a three-member panel, which can make recommendations. However, the panel's recommendations are not binding and the Joint Committee shall endavour to resolve the dispute taking into account the panel's recommendations. But, if the joint committee still does not resolve the dispute within 30 days, *the affected Party shall be entitled to take any appropriate and commensurate measure* (Article 17.2.b)..

The phrase *any appropriate and commensurate measure* was a matter of concern for Jordan as it might entail a meaning of any action including *sanctions* (Bolle, 2003, p.3). However, such a concern was overcome as both parties agreed - in exchanged letters between the Jordanian Ambassador to the U.S. and the U.S. Trade Representative Robert Zoellick on July, 23 2001 - that the phrase *commensurate measures* did not mean *sanctions* (Bolle, 2003, p.3). Furthermore, the two countries agreed to settle any differences they might have through consultations, rather than through the formal dispute settlement process. The letters also stated that each government *would not expect or intend to apply the Agreement's dispute settlement enforcement procedures ... in a manner that results in blocking trade* (Bolle, 2003, p.3). (See also Prados, 2006).

2.3. New areas: electronic commerce and labour and environmental standards

For the first time in a free trade agreement, the Jordan-U.S. FTA incorporated electronic commerce (Article 7). The previous USTR, Charlene Barshefsky, commented that the inclusion of electronic commerce in the Jordan FTA would encourage investment in new technologies and stimulate the innovative uses of networks to deliver products and services (Ruebner, 2001). Both countries agreed to avoid imposing customs duties on electronic

transmissions, imposing unnecessary barriers to market access for digitised products, and impeding the ability to deliver services through electronic means (Bolle, 2003).

Also, the Jordan FTA was the first U.S. free trade agreement to include a specific provision that links trade liberalisation to environmental protection. According to Article 5 of the Agreement, each country agreed to avoid relaxing environmental laws to encourage trade. At the same time, Article 5 recognises the right of each country to establish its own environmental laws and policies. The substance of the environmental provision in the U.S.-Jordan FTA is almost identical to that included in the NAFTA. The primary difference is that the U.S.-Jordan FTA places it in the actual body of the agreement, thereby making it subject to the general dispute settlement mechanism set out in the agreement. But, under the NAFTA, the environment provision is relegated to a side agreement, where it must rely on its own dispute settlement (Rosen, 2004, pp.66-67). The two parties also agreed on an environmental cooperation initiative, which establishes a U.S.-Jordanian Joint Forum on Environmental Technical Cooperation for ongoing discussion of environmental priorities and related issues (Rosen, 2004). The FTA also includes an initiative of eliminating tariffs on a number of environmental goods and technologies and liberalising Jordan's restrictions on certain environmental services.

Another important area of the Jordan-U.S. FTA is Article 6 on labour issues, which is also incorporated for the first time in a U.S. FTA, rather than being included in a side agreement as is the case of the NAFTA (Bolle, 2001, Rosen, 2004). Thus, labour issues are subject to the dispute settlement procedures set forth in the Agreement. Article 6 requires that labour laws must reflect both *internationally recognized labor rights* as defined by the U.S. Trade Act of 1947, and core labour standards as defined by the International Labour Organisation which include the right of association and the right to organise and bargain collectively. Article 6 further requires both parties not to relax their own labour laws in order to encourage trade with the other party.

3. Considerable issues related to the U.S.-Jordan FTA

As being the first agreement to incorporate new issues such as labour, environment, and electronic commerce, the U.S.-Jordan FTA generated some attentions and was regarded as a model for other FTAs (Cooper, 2006). Howard Rosen (2004) argues that these issues were incorporated deliberately by the previous U.S. President, Bill Clinton, so that

Democratic congressional support for the Jordan FTA could be guaranteed (Rosen, 2004). As the Congress had for long refused to give the Executive Branch the fast-track negotiating authority[1], President Clinton incorporated issues of labour and environment in the Jordan FTA to make it more attractive for the Congress to approve. Clinton's maneuver of transferring the Jordan FTA to Congress - with its new attractive baits of environment and labour chapters - came about just three weeks before leaving office (Bhagwati, 2001a,b). George Bush Administration found it very difficult to block the Agreement on the basis of its inclusion of new chapters on environment and labour, as doing so would be seen as a negative attitude of the Bush Administration towards a friendly country (Rosen, 2004). In her testimony before the Senate Finance Committee on March 20, 2001 the previous U.S. Trade Representative, Charlene Barshefsky commented that the Jordan FTA sought to achieve three main objectives; (1) encouraging regional economic integration, (2) supporting Jordan's economic reform, and (3) developing a model for free trade agreements. The model was further developed in subsequent FTAs with Morocco, Bahrain, and Oman.

However, Jagdish Bhagwati (2001a) in his testimony on the same day – March 20, 2001 - to the same committee (Senate Finance Committee) launched heavy criticism on the Jordan-U.S.-FTA. This is because it did not serve the interests of the MTS as it was based on discrimination to non-member countries and would create a situation of trade retaliation. Bhagwati criticised the inclusion of labour and environmental standards in the Jordan FTA and contended that they are non-trade issues and should not be included in any FTA. Bhagwati condemned the U.S. lobby for their inclusion in the WTO on the same ground, which has resulted in big disagreements with the developing countries. Bhagwati argued that the inclusion of these standards in an FTA would harm the U.S. interests. This is because other countries such as India and Brazil, which opposed the incorporation of labour and environmental standards in trade treaties, would retaliate by seeking other softer FTAs with other major players such as the EU and Japan. As a result, the U.S. would suffer from trade discrimination and diversion as a result of these bilateral arrangements (Bhagwati, 2001a)

[1] Fast track authority is the old term of the trade promotion authority (TPA). As is explained in section one of chapter three, if the TPA is granted by the Congress, the Administration can directly negotiate and sign a free trade agreement without being amended by the Congress. The latter can only approve or reject the whole agreement

> Even if the template is only for all future FTAs, with the Jordan Agreement acting as a precedent we cannot walk away from, this will bring us harm because, in a world of proliferating FTAs…we will find ourselves in adverse competition with other nations who will not impose such provisions on prospective trade partners (Bhagwati, 2001a, p.7).

Bhagwati (2001a) opposed the calls for including labour and environmental standards in trade agreements on the claim that free trade results in reducing workers' wages, and thus causing unfair trade. He argues that these standards have nothing to do with free trade. On the contrary, their inclusion in FTAs would result into what he calls *export protectionism*, as the U.S. would be able to restrict the competitive advantages of developing countries where labour wages are low by imposing strict measures of labour and environmental standards, thus making the exports of these countries more costly and less competitive.

> Since asking for outright protection is not kosher any more, why not try to raise production costs abroad by citing lower standards, lower "living wage", and the like, and saying that otherwise the competition and the trade are "unfair"? That is real smart, you must admit. It is what I call a form of "export protectionism" (i.e. getting the exporter to become uncompetitive) as against conventional "import protectionism" (i.e. raising import barriers) (Bhagwati, 2001a, pp.7-8).

Bhagwati (2001a) further argued that trade sanctions used as a result of not binding to the environmental and labour standards in U.S. FTAs were not productive nor were they efficient. On the contrary, they lead to more harm to labour and environmental conditions in the country that was accused of violating their standards. Also, complex issues such as exploitation of workers, child labour and environment damages were more suitably handled by other specialised international organisations such as International Labour Organisation (ILO) and its International Program for the Eradication of Child Labour (IPEC). Bhagwati contended that the task and capacity of the WTO did not make it fit to incorporate these issues in its legal system. If that was done, then the WTO would be at risk of being destroyed. These issues were highly contentious and would likely lead to a creation of *"a North-South divide"*. Moreover, the WTO did not have the financial and administrative capacity to incorporate these issues which fell under the task of other organisations (Bhagwati, 2001). Therefore, Bhagwati strongly suggested to the Finance Committee that the best choice was to remove labour and environmental provisions from the Jordan-U.S. FTA. However, he added that if it was found necessary that they had to be mentioned in the Jordan FTA, then they had to be made separate as it had been the case with NAFTA. If the latter choice was taken, it would be important for the Finance Committee to emphasise that these side agreements of the Jordan-U.S. FTA had no implication whatsoever for the

multinational round of the WTO (Bhagwati, 2001a). Nevertheless, as is explained above, Bhagwati's views were not considered and the Jordan FTA incorporated labour and environment standards in its body text.

4. Other incentives: the Jordan-U.S. FTA is more than a political reward

As is mentioned above, the U.S. trade policy makers such as U.S. Trade Representative, Charlene Barshefsky complement the FTA with Jordan for being an important element of the U.S foreign policy in the Middle East, through which the U.S. would provide assistance for the economic growth of a friendly country (Rosen, 2004, Feinberg, 2003). Thus, it is widely held that the FTA works more for the benefit of the economy of Jordan than for the U.S., particularly when considering the very low level of trade between the two countries (Rosen 2004). The whole issue is painted as a favour – or a reward – by the U.S. to Jordan for being a politically friendly country with the U.S, even if the U.S. does not gain much benefit.

> This agreement is the capstone of the economic partnership between U.S. and Jordan. This treaty also has broadened political significance. It is a powerful example to Jordan's neighbors in the Middle East that there are great benefits to peace, and is a vote of confidence in Jordan's economic reform program, which should serve as a source of growth and opportunity for Jordanians in the coming years (International Economics, 2007).

However, as is the case with the Israel FTA, besides the emphasised political factors, there may exist another U.S. multi-objective agenda behind the Jordan FTA; namely (1) escaping the difficulties of the MTS, (2) competitive liberalisation with other major players, and (3) available potential market opportunity.

4.1. Escaping the difficulties of the multilateral trading system

The Jordan FTA was negotiated at the time of difficulties facing the WTO negotiations with the failure of Seattle in November 1999. Multilateral talks over an extensive agenda containing complex issues proved highly difficult and the outcome was disappointing (Gallagher, 2005). Hence, this disappointment could have induced the U.S. to negotiate a trade deal with Jordan as an escaping window from the highly problematic MTS. After the Israel FTA in 1985, and the establishment of NAFTA in 1993, the U.S. stopped seeking to negotiate an FTA until 2001. Throughout the 1990s with the successful establishment of the WTO and the two conferences followed after that; namely Singapore (1996) and Geneva (1998), the U.S. proved to be a very strong supporter of the MTS (Gallagher,

2005). Some of its very favoured issues such as basic telecommunication services were incorporated as a separate agreement in the WTO. In other words, the U.S. did not need to deviate from the MTS at that time. However, when things started to become more complicated and blocked at Seattle (1999), a deviation towards bilateral trade agreements could be the alternative. In order to achieve the approval of the Congress whose fast track authority was not guaranteed at that time, negotiating an FTA with the friendly country of Jordan was the best option, particularly as the FTA incorporated issues such as labour and environment which are matters of concerns for many Congressmen. By incorporating these issues and other new issues such as electronic commerce, Jordan FTA was described by U.S. policy makers as a model agreement and would act as a template for future FTAs negotiations. This confirmed the U.S. Administration willingness to proceed with its bilateral-regional agenda and negotiate new other FTAs. The words of Jagdish Bhagwati (2001) in his testimony on the Jordan FTA before the Senate Finance Committee reflect his concern about the rush towards the FTAs;

> We must address the questions raised by proliferating FTAs as they intrude into the world trading system in ever expanding numbers: do we join the stampede or do we seek to halt it using our power....But any FTA not just the US-Jordan FTA – raises that question. I will...not go beyond simply alerting you to this question which agitates a number of students of the trends in the world trading system (Bhagwati, 2001, p.6)

4.2. Competitive liberalism: the European factor

The European competitive interests in the region might have also consolidated the U.S. incentive to negotiate the Jordan FTA. The U.S.' concerns of being discriminated and losing markets vis-à-vis the EU trade arrangements in the Middle East and the Mediterranean could also justify the U.S. enthusiasm towards the Jordan FTA. On November 24, 1997 the EU signed the Euro-Mediterranean Association Agreement with Jordan, which entered into force on May 1, 2002. This Agreement is part of the European proximity policy towards the Mediterranean region which is governed by the global and comprehensive Euro-Mediterranean Partnership launched at the 1995 Barcelona Conference between the EU and its originally 12 Mediterranean Partners: Israel, Morocco, Algeria, Tunisia, Egypt, Jordan, the Palestinian Authority, Lebanon, Syria, Turkey, Cyprus, and Malta (European Commission, 2007a). The Association Agreement with Jordan is part of the bilateral track of the Euro-Mediterranean Partnership and provides a comprehensive framework for the economic, political, and social dimension to the EU-Jordan partnership. The Association Agreement aims at creating free trade between the EU and Jordan over a

period of 12 years, and helping increase economic growth for the business community of both parties. The first EU-Jordan Association Council meeting was held in Luxemburg on June 10, 2002 (European Commission, 2007a). The Association Committee which is another important subordinate forum of the Agreement decided the activation of 10 thematic sub-committees to work out in detail the agenda agreed in the Agreement. The thematic areas include trade and investment promotion, agriculture, science and technology, regional co-operation, social affairs, customs, human rights and democracy, energy and environment, transport and regulatory forum. The subcommittees and their conclusions were endorsed at the third EU-Jordan Association Committee which took place on June 21, 2005 (European Commission, 2007a).

According to the European External Relation's Data, Jordan suffers from a structural trade deficit with imports almost are twice as high as exports. In 2004, Jordan's share in EU trade was only 0.03% for imports and 0.2% for exports (EIU, 2006d). However, the EU is Jordan's main source of imports, accounting for around one third of Jordan's total imports. It consists mainly of machinery, transport material, chemical and agricultural products. The EU is also Jordan's fourth export market. Jordan's exports concentrate on a few products, most of which have poor international market prospects and thus reduce Jordan's export competitiveness: mineral products 25 percent, chemicals 50 percent, and oils 12 percent (EIU, 2006d). Nonetheless, the EU hopes that trade activities with Jordan will increase in the coming years, given the liberal economic reforms of Jordan. Hence, a number of measures have been taken by both parties to increase investment and trade activities between them, such as the establishment of a sub-committee on investment promotion and trade development to implement the necessary legislative reforms and to find technical solutions contributing to the attraction of Foreign Direct Investment (FDI) and develop trade. Moreover, a business to business dialogue was established to identify obstacles to investment and trade. Both, the sub-committee and the business to business dialogue were activated in 2004 (European Commission, 2007a).

As a result of these special EU-Jordan trade arrangements, the U.S. may have found its exports marginalised and discriminated against, which in turn encouraged the U.S. to sign an FTA with Jordan. This U.S. encouragement was supported by the strong political relationship with Jordan and the importance of Jordan in Middle East peace process and the security of Israel. The words of Jeffery Schott (2001b) -- in his testimony before the

Subcommittee on Trade House Committee on Ways and Means held on March 29, 2001 on the implications of bilateral-regional trade arrangements that did not involve the U.S. -- provides some supports to this view;

> Four years ago [before the U.S.-Jordan FTA], I alerted this subcommittee that the "the countries in the hemisphere continue to pursue bilateral and regional free trade pacts without us" [originally quoted], and the US trading interests could be adversely affected if this trend continues. It has and we have..The European Union has concluded a large number of "association" agreements with countries in its neighborhood and in the Mediterranean Basin...Overall, FTAs involving US trading partners but not the United States can affect US interests...US exports face discriminatory treatment in foreign markets compared to that accorded to producers from the participating countries. Exports contracts are either lost or sourced from overseas production plants; either way, it hurts US-based production and workers (Schott, 2001b, pp.1-2).

4.3. Low level of trade between the U.S. and Jordan

Statistics show that trade between the U.S. and Jordan before signing the FTA was very low. Thus, improving the level of trade and creating business opportunities for U.S. exports can also be seen as another incentive for the U.S. to sign an FTA with Jordan. In 2000, i.e. one year before the implementation of the FTA, total trade between the two countries amounted to $390 million only (table A.3.15 below) (U.S. Census Bureau: Department of Commerce, 2004). U.S. exports to Jordan accounted for less than a half of one percent of total U.S. exports and a little less than ten percent of total Jordan imports. U.S. imports from Jordan accounted for approximately one-tenth of total U.S. imports and five percent of total Jordan exports (Census Bureau: Department of Commerce, 2004). However, it may be noticed from table (A.3.15) below that U.S. imports from Jordan sharply increased from $73.3 million in 2000 to $ 229.1 million in 2001 and to $ 412.2 million in 2002.

Table (A.3.15): U.S. trade with Jordan 1996-2002

Year	Exports (millions $)	Imports (millions $)	Balance (million $
1996	345.2	25.2	320.0
1997	402.5	25.3	377.2
1998	352.9	16.4	336.5
1999	275.6	30.9	244.7
2000	316.7	73.3	243.3
2001	339.0	229.1	109.9
2002	404.4	412.2	-7.8

Sources: U.S. Census Bureau: Department of Commerce, 2004; Rosen, 2004, p.65

According to figures dated 2002, trade between the U.S. and Jordan seemed to be quite diverse in terms of products. Table (A.3.16) below presents the top 10 exports from the

U.S. to Jordan in 2002, which account for more than two-thirds of all U.S. exports to Jordan. They included some food and some basic manufactured goods (Rosen, 2004). However, U.S. imports from Jordan in the same year (2002) reached a value of $412.2 million and were mostly concentrated on apparel products; 93.2 percent (see table A.3.17).

Table (A.3.16): Top U.S. exports to Jordan, 2002 (millions of dollars)

Standard International Trade Classification	Value	Share (percent)
04 Cereals	53.5	13.2
79 Transport equipment	46.4	11.5
89 Miscellaneous manufactured articles	43.1	10.7
77 Electrical machinery	27.5	6.8
76 Telecommunications	22.1	5.4
74 General industrial machinery	18.1	4.5
78 Road vehicles	16.9	4.2
87 Professional and scientific equipment	16.0	4.0
42 Fixed vegetable fats and oils	15.8	3.9
75 Office machines and automatic data processing equipment	13.9	3.4

Sources: Rosen, 2004, p.65

Table (A.3.17): Top U.S. imports from Jordan, 2002 (millions of dollars)

Standard International Trade Classification	Value	Share (percent)
04 Apparel	384.2	93.2
89 Miscellaneous manufactured articles	13.9	3.4
54 Medicinal and pharmaceutical products	1.9	0.5
27 Crude fertilizers	1.7	0.4
74 General industrial machinery	0.9	0.2
65 Textile yarn and fabrics	0.8	0.2
83 Travel goods and handbags	0.7	0.2
55 Essential oils	0.6	0.1
72 Special machinery	0.5	0.1
66 Nonmetallic mineral manufactures	0.5	0.1

Sources: Rosen, 2004, p.65

Some U.S. trade officials frequently cite Jordan- U.S. FTA as a successful example. For instance, in her interview on March 20, 2005 with the Arabic newspaper Al-Sharq Al-Awsat, Catherine Novelli; the then Assistant U.S. Trade Representative for Europe and the Mediterranean, commented that trade between Jordan and the U.S. increased from just over $300 million in 1999 to $1.9 billion in 2004, which resulted in additional 40 thousand new job opportunities. Novelli added that foreign investment in Jordan increased from $627 million in 1995 to $2.4 billion in 2002 (Al-Sharq Al-Awsat Newspaper, 20 March 2005). However, for Emad Mekay (2006) -- a specialist journalist on trade and economic affairs -- this increase in trade levels between Jordan and the U.S. could not be fully attributed to the FTA, but perhaps more to the existence of the Qualifying Industrial Zones (QIZ) between Jordan and Israel (Al-Jazeera Channel, 26 January 2006), whose products can enter the

U.S. duty free and quota free, provided that they meet certain minimal standards such as those related to rules of origin (Ministry of Industry, Trade & Labor of Israel, 2007).

5. Concluding remarks

The Jordan-U.S. FTA provides a good example for the multi-political and economic objectives that are sought to achieve by the U.S. from its bilateral trade policy. The political factors that seem to justify the U.S.' endavour to sign the FTA with Jordan can be; 1) further consolidating the security of Israel via trade means, 2) helping Israel to integrate economically with its neigbours, and 3) thus achieving more stability in the region and hopefully would participate in accelerating the peace process in the region. Besides political incentives the Jordan FTA can be seen as an element of U.S.' deviation from the difficulties of the MTS negotiations, and as a tool of gaining competitive ground that could have been lost as a result of EU bilateral agreements. Jordan FTA acts also as a template for future FTAs negotiations as it includes new elements of government procurement, electronic commerce, labour and environmental standards.

Appendix 3.3: A review on the Morocco-U.S. Free trade agreement

1. Background: political and foreign policy emphasis

The Morocco–U.S. FTA, which was signed on June 15, 2004 and officially implemented on January 1, 2006, is another important step forward towards the MEFTA programme. Negotiations on the Agreement started in January 2003 and took eight rounds of discussions to finalise (USTR, 2004a,b). Its initiative was announced in a meeting at the White House on April 23, 2002, between President George Bush and King Mohammed VI of Morocco (Ahearn, 2005). As is the case of Jordan, politics was heavily emphasised and appeared as the driving force behind the Agreement. Issues such as the strong political relationship between both countries and that Morocco was the first country ever in the world to recognise the newly-sovereign United States in 1777 were repeatedly spoken about when negotiations were launched (USTR, 2004a,c). Another political element that was regularly mentioned during the negotiations of this FTA was the Treaty of Peace and Friendship between both countries which goes back to 1787 and is regarded as the longest unbroken treaty relationship in the U.S. history (USTR, 2004a,b,c).

Time and again, U.S. officials made strong references to Morocco's alliance policy with the U.S. in current politics. Morocco has shown an active role in the peace process in the Middle East and maintained strong relationship with Israel. Morocco was one of the first Arab countries to condemn Iraq's invasion of Kuwait and sent troops to defend Saudi Arabia, and aid the efforts to repulse Saddam Hussein (Galal & Lawrence, 2004). In his meeting with King Mohammed II in April 2002, U.S. President George Bush made a clear link between the pro-American foreign policy of Morocco with the foundation of the FTA between both countries (Whitehouse, 2002).

> No question that Morocco is a great friend of the United States of America and for that, Your Majesty, we are very grateful. I appreciate your steadfast support when it comes to the war on terror. I appreciate your leadership in the region. Today, I've informed His Majesty that our government will work to enact a free trade agreement with Morocco…Trade is an important part of good foreign policy

2. Non-political factors and economic ambitions

As is the case with the Jordan FTA, in addition to the announced political factors and the strongly emphasised relationship between the two countries, there also exist economic factors that could explain the U.S. enthusiasm to sign an FTA with Morocco. Perhaps,

these economic motives are clearer and more realisable than is the case of Jordan (Feinberg, 2003), as explored below.

2.1. Low level of trade activity

Economic statistics before the implementation of the Morocco FTA demonstrate that the U.S. was a relatively minor trading partner, unlike the EU. In 2000, U.S. exports of $253.9 million and imports of $643.5 million accounted for 3 and 6 percent of Morocco imports and exports respectively (Galal & Lawrence, 2004, p.318). U.S. imports were concentrated in phosphates, fish and prepared vegetable, mineral fuels and oils, and textiles and clothing. U.S. exports were focused on agricultural products (maize and wheat), air-craft and machinery (see table A.3.18 below).

Table (A.3.18): Morocco bilateral trade with the United States, 2000

Morocco's exports to the U.S.			Morocco's imports from the U.S.		
Category	Share (percent)	Total (millions $)	Category	Share (percent)	Total (millions $)
Articles of apparel, accessories, not knitted or crocheted	28	69.7	Aircraft, spacecraft, and parts thereof	22	143.8
Salt, sulphur, earth, stone, plaster, lime, and cement	24	60.0	Cereals	21	135.4
Meat, fish, and seafood food preparations	9	23.2	Nuclear reactors, boilers, machinery, etc	11	69.3
Mineral fuels, oils, distillation products, etc.	9	21.6	Mineral fuels, oil, Distillation product, etc	8	48.8
Vegetable, fruit, nut, etc. food preparations	8	19.9	Tobacco and manufactured tobacco substitutes	7	43.0
Other commodities	23	58.5	Other commodities	32	203.2

Source: Galal and Lawrence, 2004, p. 318.

However, Morocco trade with the EU countries was of a much higher scale. As is explored in table (A.3.19) below, in 2000, the EU accounted for 58 percent of Morocco's imports and about 75 percent of its exports. France was the most important trading EU partner for Morocco of 24 percent of imports and 13 percent of exports followed by Spain with 10 percent of imports and 13 percent of exports (Galal and Lawrence, 2004, p.316). Between 1993 and 2003, trade volumes between EU countries and Morocco grew by over 80 percent (European Commission, 2007a,b). In 2004, the total trade between both sides reached €15.7 billion and Morocco ranked the EU's twenty eighth trading partner. For Morocco, the EU was its first trading partner as 65 percent of its imports – €9.6 billion -

came from the EU, and 70% of its exports - €6 billion - went to the EU (European Commission, 2007a,b).

Table (A.3.19): Morocco's major trade partners, 2000

Morocco's exports to the EU			Morocco's imports from the EU		
Country	Share (percent)	Total (millions $)	Category	Share (percent)	Total (millions $)
France	34	2.491.0	France	24	2.771.3
Spain	13	963.5	Spain	10	1.138.4
United Kingdom	10	712.7	United Kingdom	6	711.6
Italy	7	529.5	Untied States	6	643.5
Germany	5	369.2	Saudi Arabia	5	573.1
India	4	310.9	Germany	5	562.8
Japan	4	283.8	Italy	5	546.3
United States	3	253.9	Iraq	4	475.2
Belgium	3	209.6	Iran	3	357.4
Netherlands	2	124.1	China	2	268.0
Brazil	1	68.9	Sweden	2	255.9
All others	15	1.114.7	All others	28	3.229.7

Source: Galal and Lawrence, 2004, p.316

Therefore, the U.S. was a very marginal trade partner with Morocco whose market was mainly dominated by the EU countries. The eagerness to gain more competitive ground for U.S. companies in the Moroccan market via an FTA is very relevant and can not be ignored. As the Deputy USTR, Peter Allgeier (2004) puts it in his testimony to the Senate Committee on Finance that; *[t]his Agreement will...serve to level the playing field for U.S. companies vis-à-vis their EU competitors.* Through the FTA, the U.S. seeks to shift trade activities with Morocco to its benefit when the high level of tariffs and non-tariff barriers are reduced (USTR, 2004c,d).

For example, before the FTA, major sectors of Morocco's agriculture were characterised by their high rates of tariff protection. But, on the other hand, most of goods Morocco exported to the U.S. were not subject to very high tariffs in the U.S (Allgeier, 2004). U.S. tariffs that exceeded 4 percent were only on: crops besides grains (13.9 percent), processed food products (11.5 percent), and textiles and apparel (11.8 percent). By contrast, Morocco tariffs were generally between 15 and 25 percent and for processed foods were even much higher at 71 percent (Gilbert, 2003). Not only can U.S. companies directly benefit form the zero or the substantially eliminated-tariff situation as a result of the FTA, but they can also establish their operation in Morocco and exploit its strategic location at the crossroads of Europe, Africa, and Middle East. Thus, Morocco can become an important hub for U.S. businesses. The latter can then become more competitive not only in the Moroccan market but also in the European markets (Galal & Lawrence, 2004). These economic ambitions are

clearly expressed by the Deputy USTR, Peter Allgeier (2004) in his testimony to the Senate Committee on Finance.

> This Agreement will result in significant benefits for U.S. exporters, workers, investors, farmers and ranchers. Morocco is an emerging market at the crossroads of Europe, Africa and the Middle East...Currently [before the implementation of the FTA] U.S. products entering Morocco face average tariffs of more than 20 percent, while Moroccan products are subject to average duties of only 4 percent in the United States. Under this Agreement, more than 95 percent of two-way trade in consumer and industrial products will become duty-free immediately upon the Agreement's entry into force, with all remaining tariffs on currently traded products to be eliminated within nine years, making this the best market access package of any U.S. free trade agreement signed with a developing country.

2.2. The effect of other preferential trade agreements

The U.S.' concerns for its exports being discriminated against as a result of other PTAs that Morocco had signed with other competitive players, appeared to be an important relevant factor behind the U.S.' endeavour to sign an FTA with Morocco. As part of its ambitious reformist programme towards economic liberalism, Morocco has signed a PTA with the EU, which would lead to free trade in industrial products with the EU by 2012 (European Commission, 2007a). Morocco-EU agreement is confined to industrial products only and does not cover other sectors such as services, investment, and agriculture. Morocco has also agreed with Egypt, Jordan, and Tunisia to set up a free trade zone ahead of the 2010 target for ending trade barriers in the Euro-Mediterranean area. The zone would also be open to other Arab countries such as Algeria, Libya, Mauritania, Syria, Lebanon, and Palestine (Galal & Lawrence, 2004). Morocco is also a party of the Community of Sahel-Saharan States (COMESSA)[1], which seeks to consolidate economic and commercial integration among member states (Arabic News, 2001). Therefore, as these preferential arrangements – particularly the one with the EU – discriminated against U.S. businesses and products in the Moroccan market, the U.S. had to follow their suit by entering into a very comprehensive FTA with Morocco. As Galal and Lawrence (2004, p.326) put it; *since Europe has already signed an agreement to give its preferential access, for the United States an FTA with Morocco can be seen as a defensive measure against an important competitor.*

[1] Members of COMESSA include Burkina Faso, Central African Republic, Chad, Djibouti, Egypt, Eritrea, Gambia, Libya, Mali, Morocco, Niger, Nigeria, Senegal, Somalia, Sudan, and Tunisia (Comessa, 2007).

2.3. Difficulties of multilateral trading system

As is the case of Jordan FTA, Morocco FTA seems to be another escaping window form the MTS which has been confronted by different challenges and where the agenda of the U.S. could not be easily accepted. The failure of Cancun in 2003 when the U.S. Trade Representative implied that his country would seek bilateral means, can be used as a justification for the U.S.- Morocco FTA as well as many other U.S. FTAs that followed. When the U.S. failed to achieve its special agenda of government procurement, and environmental and labour standards at the multilateral trade level, it successfully managed to do so via bilateral means such as the FTA with Morocco. The Agreement with Morocco is praised by the U.S.' officials for its comprehensiveness – even more comprehensive than Jordan FTA – and that it can be used as a model for other FTAs. As the USTR Robert Zoellick (2004) puts it; *our agreement with Morocco is not just a single announcement, but a vital step in creating a mosaic of U.S. free trade agreements across the Middle East and North Africa* (USTR, 2004b). Similarly, Peter Allgeier, Deputy U.S. Trade Representatives (2004, p.4) comments that Morocco FTA is;

> an essential building block not only for Morocco's economic and structural reform effort, but also for the [Bush] Administration's goal of building a more market-oriented, liberalized economic regime in the Middle East and North Africa.

2.4. Cementing economic reforms

U.S. officials also argue that the FTA with Morocco would lock-in and enhance the economic liberal reforms that Morocco has been adopting for the last few years. Hence, the chance for Morocco to resort to protectionism would be highly unlikely (USTR, 2004b,c,d). This point was patently confirmed in the President Bush's message to the Congress on the FTA with Morocco, which states that:

> Indeed, this Agreement offers the United States an opportunity to encourage economic reform in a moderate Muslim nation… Leaders in Morocco support a reformist and tolerant vision that includes free parliamentary elections, the sale of stat-owned businesses, the encouragement of foreign investment that can be connected to broad-based development… It is strongly in the interests of the United States to embrace these reforms and do what we can to encourage them. Passing this Agreement is a critical step in that direction (Bush, 2004)

3. The nature of the U.S.-Morocco Free Trade Agreement

Unlike the Jordan FTA which consists of 19 detailed Articles without being divided into chapters, the Morocco FTA consists of 20 comprehensive chapters and each chapter consists of different Articles covering a wide-range of issues such as agriculture, textiles,

rules of origin, investment, financial services, telecommunications, electronic commerce, intellectual property right, labour and environmental standards, and dispute settlement. Morocco-U.S. FTA also contains a chapter on government procurement. Oman-U.S. FTA greatly resembles the Morocco FTA. An elaboration of some of these issues is provided below.

3.1. Market access

With the implementation of the U.S.- Morocco FTA, more than 95 percent of bilateral trade between both countries in consumer and industrial products became duty-free. The remaining tariffs on these types of products will be eliminated within nine years. Comparing this situation with the very high tariffs and protective measures Morocco used to have before January 2006, the U.S. regards their FTA with Morocco as the best market access package of any U.S. free trade agreement with a developing country (Allgeier, 2004). Important products and sectors for the U.S. such as information technologies, machineries, construction equipment and chemicals have all gained duty free access to the Moroccan market. The Agreement also covers all agricultural products and, thus, many U.S.' farm products can freely access the Moroccan market. Tariffs on products such as corn and corn products, sorghum, soybeans, and soybean meal are cut significantly or eliminated immediately. Also, Morocco provides immediate duty-free access on products such as pistachios, pecans, frozen potatoes, whey products, processed poultry products, pizza cheese and breakfast cereals. Tariffs on other products such as walnuts, grapes, pears, cherries, and ground turkey will be phased out in five years. Overall, tariffs on virtually all U.S. farm exports to Morocco – as well as imports from Morocco - will be phased out within fifteen years (Ahearn, 2005). Thus, U.S. farming industries will greatly benefit from the FTA with Morocco; as they will become more competitive in the Moroccan market (USTR, 2004c).

3.2. Services sectors

Substantial market access of services sectors such as finance, insurance, audio-visual, express delivery, telecommunications, computer related services, distribution, and construction and engineering are accorded to the U.S. industries in the Moroccan market. For example, according to chapter 12 of the Agreement, U.S. financial service suppliers have the right to establish subsidiaries and joint ventures in Morocco, which would enable them to compete in the Moroccan market. But, in the case of insurance agency and

brokerage, Morocco can restrict foreign equity to 51 percent. In addition, banks and insurance companies have the right to establish branches, subject to a four-year phase-in for most insurance services. Morocco also allows U.S. based firms to supply insurance, reinsurance brokerage as well as marine, aviation, and transport insurance and brokerage subject to a two- year phase in. Morocco also permits U.S. based firms to offer services cross border to Moroccans in areas such as financial information, data processing, and financial advisory services (Ahearn, 2005).

Furthermore, unlike the Jordan-U.S. FTA which does not contain a separate chapter on telecommunication, Chapter 13 of the Morocco-U.S. FTA separately deals with the telecommunications services, thus making it more comprehensive than the former. Both countries are committed to provide users of telecom networks with reasonable and non-discriminatory access to the network. Thus, local firms in Morocco will no longer be able to enjoy preferential access to telecom networks over U.S. firms. The latter have the right to interconnect with the former monopoly networks in Morocco and they can have access to key facilities such as telephone switches and submarine cables landing station at non-discriminatory cost-based rates (Ahearn, 2005). Thus, U.S companies are able to lease elements of Moroccan telecom networks on non-discriminatory terms and to re-sell telecom services of Moroccan suppliers to build a customer base[2].

3.3. Electronic commerce and Investment

As is the case under the Jordan FTA, according to chapter 14 of the Morocco FTA, both the U.S. and Morocco are committed to non-discriminatory treatment of digital products and not to impose customs duties on them. It is emphasised that for digital products delivered on hard media (such as a DVD or CD), customs duties are based on the value of the media (for example, the disc), not on the value of the movie, music or software contained on the disc. In addition, according to chapter 10 of the Agreement, each government must publish its laws and regulations governing trade and investment. Both governments are committed to apply fair procedures in administrative proceedings covering trade and investment matters directly affecting companies from both countries. Each party must ensure that traders and investors from the other party can obtain prompt and fair review of final administrative decisions affecting their interests. Also, both parties are committed to fight

[2] These provisions are substantially similar to those stated in the telecommunications chapter of Oman-U.S. FTA. Chapter six provides thorough analysis on this sector.

corruption, prohibit bribery and establish appropriate criminal penalties to punish violators. All forms of investment are protected under the Agreement, such as enterprises, debt, concessions, contracts, and intellectual property. U.S. investors enjoy the right to establish, acquire and operate investments in Morocco on an equal footing with Moroccan investors, and with investors with other countries. The Agreement provides the U.S. with the rights to receive a fair market value for property in the events of an expropriation. It also removes certain restrictions and prohibits the imposition of other restrictions on U.S. investors, such as requirements to buy Moroccan rather than U.S. inputs for goods manufactured in Morocco. These rights are also protected by dispute settlement where submissions to dispute panels and panel hearing will be open to the public, and interested parties will have the opportunity to submit their views.

3.4. Intellectual property rights

The IPR of the Morocco FTA has received a wide support from the U.S. business people and government officials alike. It is described as one of the best FTAs singed by the U.S. For instance, the Entertainment Industry Coalition for Free Trade describes the Agreement as a *strong [one that]...would enhance the protection of creative works and create new market opportunities for both the US and Morocco* (USTR, 2004d). Similar compliments are expressed by different U.S. agencies that are concerned about the IPR such as the International Intellectual Property Alliance (IIPA) and the Recording Industry Association of America (RIAA). The latter comments that;

> ..the free trade agreements negotiated by our trade representative, including this one with Morocco, have included important provisions that strengthen the rights of creators. Along with this agreement, they have compiled an impressive track record of free trade agreements that promote our economic competitiveness and protect the works of the intellectual property industries (USTR, 2004d).

IPR is dealt with in chapter 15 of the Agreement which ensures that authors, composers and other copyright owners have the exclusive right that make their works available online. Both parties are committed to protect copyrighted works, including phonograms, for extended terms (e.g., life of the author plus seventy years), consistent with U.S. standards and international trends. The Agreement also includes strong anti-circumvention provisions requiring each government to prohibit tampering with technologies (like embedded codes on discs) that are designed to prevent piracy and un-authorised distribution over the internet. Also, the Agreement obliges each party to use only legitimate computer software and requires protection for encrypted programme-carrying satellite signals, including the

signal itself and the programming, thus preventing piracy of satellite television programming. The Agreement also provides protection for newly developed plant varieties and animals. Trade data and trade secrets submitted to a government for the purpose of product approval will be protected against unfair commercial use for a period of 5 years for pharmaceuticals and 10 years for agricultural chemicals.

Ironically, whereas the U.S. officials describe the IPR of the Morocco FTA as a big achievement for the U.S. businesses, other NGOs such as the "Friends of the Earth" and "Human Rights Watch" criticise the Agreement for its heavy restriction of the ability of Morocco to obtain sufficient medicines. Thus, Morocco's capability to fight serious diseases such as HIV which affects around 16000 people in Morocco, will be substantially restricted (Human Rights Watch Organization, 2004). This is evident in a letter sent on February 18, 2004 from Human Rights Watch Organization to Robert Zoellick: United States Trade Representative urging him not to use the FTA with Morocco to restrict Morocco's accessibility to HIV/AIDs medicines. The group reminded Zoellick of the Doha ministerial declarations about the right of all WTO members to resort to the full provisions of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that provides flexibility for promoting access to essential medicines; including *the right to grant compulsory licenses for the production of generic medicines, the right to determine what constitutes a national emergency, and the freedom to establish a national regime for the exhaustion of patents* (Human Rights Watch Organisation, 2004).

3.5. Government procurement

Government procurement (GP) is one of the most challenging areas that the U.S. has failed to incorporate in the MTS, but has successfully done so in its FTA with Morocco as well as FTAs with Bahrain and Oman. Chapter nine of Morocco FTA includes disciplines on the purchases of most Moroccan central government agencies, as well as the vast majority of Moroccan regional and municipal governments. The Agreement requires that the purchases of Moroccan governmental agencies are not discriminated against U.S. firms, or in favour of Moroccan firms. Also, U.S. and Moroccan suppliers will equally enjoy strong transparency on procurement procedures, such as requiring advance public notice of purchases, as well as timely and effective bid review procedures. Each government is obliged to maintain criminal and other penalties for arbitrary in government procurement. It is worth-mentioning that Jordan FTA does not contain similar obligations on government

procurement. Article 9 of the Jordan FTA only obliges Jordan to enter into negotiations to accede the WTO plurilateral Agreement on Government Procurement.

3.6. Environmental standards

According to chapter 17 of the Agreement, each party is committed to establish high levels of environmental protection, and not to weaken or reduce environmental laws to attract trade or investment. Each government is required to effectively enforce its own domestic environmental laws, and this obligation is enforceable through the dispute settlement procedures of the FTA. Also, as is the case in the FTA with Jordan, the U.S. and Moroccan Governments have established a Working Group on Environmental Cooperation. They are also required to develop a plan of action and set priorities for future environment-related projects.

3.7. Labour standards

Chapter 16 of the Agreement sets out labour obligations that both countries must adhere to. These obligations are part and parcel of the Agreement; thus they are subject to its dispute settlement. In this chapter, each party reaffirms their obligations as members of the International Labour Organisation (ILO) and commits to strive to ensure that its domestic laws provide for labour standards consistent with internationally recognised labour principles. Similar to environmental standards, the Agreement emphasises that it is inappropriate to weaken or reduce labour protections to encourage trade or investment. Each Government is required to effectively enforce its own domestic labour laws. Access for workers and employers to fair and transparent labour tribunals or courts must be guaranteed by both parties.

3.8. Dispute settlement

All core obligations of the Agreement, including labour and environmental provisions, are subject to the dispute settlement provisions set out in the Agreement. Dispute panel procedures set important regulations on openness and transparency such as; open public hearings, public release of legal submissions by governments, and opportunities for interested third parties to submit views. As is the case in the Jordan FTA, the Agreement also includes strong enforcement mechanisms, including the ability to suspend trade concessions or establish monetary assessments.

4. Expected benefit of the Agreement: Moroccan perspective

When President Bush announced, in his meeting with King Mohammed II, that both countries would enter into negotiations of an FTA, he clearly stated that the Agreement would be in the interests of the U.S. nation and that King Mohammed II believed to be *in the interests of Moroccan people* (Whitehouse, 2002). However, given the short time span since its implementation, and due to its comprehensiveness it is still too early to evaluate the effect of the Agreement on the Moroccan economy and people. Such an evaluation would depend much on how Morocco will accommodate its economic activities and policies to overcome the challenges of the FTA and maximise its benefits.

However, unlike Europe, the U.S. does not seem to be an ideal trading partner for Morocco. Morocco's geographical proximity to Europe and its widely spoken French and Spanish languages make it a naturally suitable trading partner with Europe. Also, as is explained above, most of the goods Morocco used to export to the U.S., before the implementation of the FTA, were not subject to high tariffs, which was the opposite case for the U.S. exports to Morocco. The study of John Gilbert (2003) – cited in Galal and Lawrence (2004) -- suggests that Morocco would lose a total of $293 million of tariff revenue as a result of the FTA. It is also possible that Morocco would suffer from substantial trade diversion as goods would be purchased from the U.S. rather than from more efficient sources in Europe. Galal and Lawrence (2004) expect the trade impact of the U.S. FTA would reduce Moroccan annual incomes by about $93 million of which $25 million is estimated to result from reduced efficiency and $68 million from reductions in terms of trade.

However, Galal and Lawrence suggest that trade impact on Morocco can be mitigated when the tariffs on industrial products with Europe are completely eliminated by 2012. Thus, if Morocco extends its free trade with Europe to entail more reduction in MFN tariffs, the impact of this diversion could be substantially reduced. Also, by following the same policy, trade liberalisation of services and investment as a result of the U.S. FTA can add more substantial benefits for Morocco if it extends similar liberalisation measures to other trading partners, or even uses such a prospect to obtain additional benefits from other trading partners, particularly Europe. Moreover, the regional trade arrangements that Morocco is part of can further induce domestic regulatory reform, improve administrative

procedures, raise domestic standards, and remove bureaucratic red tape, which can all help make Morocco a healthier market for free trade (Galal & Lawrence, 2004)..

Furthermore, Morocco faces restrictions on exporting citrus fruits, fresh vegetables, horticultural products and apparel to the European market. Hence, by singing the FTA with the U.S. where such restrictions do not exit, Morocco can consolidate its negotiating stand with the EU to improve its market access in agricultural products. In the same token, Europe could become more motivated to grant Morocco with more preference in services, investment, as well as agricultural products, so that their firms can more effectively compete against the U.S. businesses in the Moroccan market (Galal & Lawrence, 2004)..

Therefore, the negative impact of the FTA on the Morocco can be minimised if Morocco follows certain complementary policies. These are -- as suggested by Galal and Lawrence (2004) -- (1) extending the bilateral tariff reductions to those placed on other trading partners, (2) using the Agreement to accelerate domestic reforms that improve the overall business environment, (3) using the Agreement as a means of making these reforms more credible, and (4) using the Agreement to increase its bargaining leverage with the EU, and to improve its market access, particularly in agricultural products and improving its capacity to implement and take advantage of the Agreement.

5. Concluding remarks

Morocco, as is the case with Jordan, is a supporter of U.S. policy in the Middle East and maintains a strong relationship with Israel. The FTA will strengthen these ties. However, besides the political interests, there are different economic interests that the U.S. sought to achieve from the FTA with Morocco. Not only will the U.S. exports to Morocco benefit from the zero tariff and gain strong competitive ground in Moroccan market, but U.S. investors can also use Morocco as a hub for their investment in Europe, Africa, and Middle East given the strategic location of Morocco at crossroads of these continents. But, in order for Morocco to escape the discriminatory treatment it has provided for the U.S. businesses via the FTA, it can extend the FTA preferences to European countries and thus create a more even competitive environment in its market.

Appendix 3.4: Background and elements of the Oman-U.S. Free Trade Agreement

1. Negotiations background

On July 7, 2004, Oman and the U.S. signed the Trade and Investment Framework Agreement (TIFA), which is considered as a precursor to the FTA negotiations (USTR, 2004e). Hence, as Oman had already been a member to the WTO and by signing the TIFA, Oman had fulfilled the necessary two steps that are required by the U.S. to enter into FTA negotiations. As a result of the TIFA, the Oman-U.S. Council on Trade and Investment was established to identify and advance opportunities in trade and investment and remove obstacles that impede them. The Council was set up to meet at least once a year. It had its first meeting in Washington D.C. on September 20-21, 2004. Oman's privatisation programme was the main focus of the Council's talks (MOCI, 2006c).

After that meeting, the two parties agreed to move towards negotiations of a comprehensive free trade agreement. The Government of Oman's negotiating team was headed by the Minister of Commerce and Industry; Maqbool Ali Sultan. The U.S. team was supervised by the Assistant U.S. Trade Representative for Europe and Mediterranean, Catherine Novelli. The negotiations were based on a draft FTA comprising of a preamble and 22 chapters that had been prepared and submitted by the U.S. Fourteen negotiating sub-groups from both sides were assigned to negotiate on one or more of the following subjects; market access for goods, textiles and clothing, sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), government procurement, investment, cross-border services, financial services, telecommunication services, electronic commerce, intellectual property rights, customs matters and rules of origin, labour, environment, and legal matters which cover the preamble, definitions, safeguards, dispute settlement, transparency, exceptions, administration of the Agreement and final provisions.

The first round of the negotiations was held in Muscat on March 12-14, 2005 and the second round took place in Washington on April 18-22, 2005. The latter was then followed by a number of digital video conferences (DVC) and negotiations via teleconferences and internet. After seven months, negotiations were concluded on October 3, 2005 and on January 19, 2006 both sides signed the FTA (USTR, 2006a). The FTA was then transferred to the U.S. Congress for its approval. The House of

Representatives approved it on July 20, 2006 by 221-205 votes and the Senate on September 19, 2006 by 62-32 votes (USTR, 2006b). Few days later, on September 26, 2006 President George Bush signed the FTA, which became a law as a result (USTR, 2006c). On October 15, 2006, the Sultan of Oman issued the Royal Decree number 109/2006 ratifying the FTA. The Decree states that *the provisions of this Agreement shall apply to issues that are included in it. Any other laws that contradict with the provisions of the agreement shall not be applied to the Agreement.* However, the FTA is only put into force on January 1, 2009 as Oman had to undergo through a long process of modifying its domestic laws and regulations to those required by the FTA.

2. The nature of the Oman- U.S. FTA

The Oman-U.S. FTA resembles very much the U.S. FTAs with Morocco and Bahrain, with some modifications that are applied to fit the case of Oman. This confirms that the U.S. has managed to reach a template agreement that has been used and will be used in future negotiations with other MEFTA countries. Oman FTA consists of twenty two chapters entailing detailed provisions on different issues and sectors, in addition to the preamble. It is important to note that in some of the chapters there are different side letters and annexes attached to them. The provisions of these documents are obligatory on both parties besides the main provisions of the chapter. At the end of the agreement, there are three annexes entailing exceptional measures on investment, cross-border services, and financial services that do not apply to the provisions of the agreement. Hence, an analysis of the content of each chapter must also entail the provisions of the attached documents. Chapters five and six of this thesis provide thorough analysis on eight issues and sectors that are included in different chapters of the FTA in comparison with WTO arrangements. Table A.3.20 below highlights the main contents of the chapters of the FTA.

Table A.3.20: main chapters of the Oman-U.S. FTA

Chapter No.	**Subject**
Preamble	An introduction to the FTA
Chapter one	Establishment of free trade area and definitions
Chapter two	Market access. **Note**: besides the main provisions the following documents are attached: - U.S. Tariff Schedule - U.S. General Notes - Oman Tariff Schedule - Oman General Notes

Chapter three	Textiles and apparel
Chapter four	Rules of origin
Chapter five	Customs administration
Chapter six	Sanitary and phytosanitary measures
Chapter seven	Technical barriers to trade
Chapter eight	Safeguards
Chapter nine	Government procurement **Note:** The following documents are attached to this chapter: - Annex 9: Terms and Conditions of coverage - Side letters on impartial authority - Side letters on state-owned enterprises
Chapter ten	Investment **Note**: There are non-confirming measures on investment that are outlined in Annexes I and II at the end of the agreement (see below).
Chapter eleven	Cross-border trade in services **Note**: -Side letters on immigration are attached at the end of the chapter. -There are non-confirming measures on this chapter that are outlined in Annexes I and II at the end of the agreement (see below).
Chapter twelve	Financial services **Note**: - Side letters on cross-border financial service suppliers are attached at the end of the chapter. -There are non-confirming measures on this chapter that are outlined in Annex III at the end of the agreement (see below).
Chapter thirteen	Telecommunications
Chapter fourteen	Electronic commerce
Chapter fifteen	Intellectual property rights **Note**: The following documents are attached at the end of the chapter. - Side letters on liability for service providers and limitations. - Side letters on optical discs. - Side letters on public health.
Chapter sixteen	Labour **Note**: - Annex 16-A titled as "Labor Cooperation Mechanism" is attached at the end of the chapter.
Chapter seventeen	Environment **Note**: - Side letters on voluntary Mechanisms
Chapter eighteen	Transparency
Chapter nineteen	Administration of the agreement **Note**: - Article 19.1 requires each party to designate a contact point to facilitate communications between them on issues related to the FTA. - Article 19.2 requires the establishment of a Joint Committee (JC) to supervise the implementation of the Agreement and review the trade relationship between the parties. - The JC shall be co-chaired by the U.S. Trade Representative and Oman's

	Minister of Commerce and Industry and their delegates. - The JC shall convene regularly every year, unless the parties agree otherwise, or even in special session within 30 days of the request of a party. The JC shall carry out the following functions; (a) reviewing the general functioning of the FTA, (b) reviewing and considering specific matters related to the operation of the Agreement (c) facilitating the prevention and settlement of disputes arising under the Agreement, (d) considering and adopting any changes to the Agreement, (e) strengthening trade relations between the parties and promoting the FTA objectives, and (f) taking other actions that parties may agree about. - The JC can also establish its own rules and procedure and issue interpretations of the provisions of the FTA.
Chapter twenty	Dispute settlement
Chapter twenty one	Exceptions
Chapter twenty two	Final provisions **Note:** - According to Article 22.5, the FTA would enter into force 60 days after the exchange of written notifications that domestic requirements have been met and other conditions pre-requisite to the entry into force have been achieved. - Any withdrawal would take effect six months after a written notice by either Party. - Like many other U.S. FTAs, Oman- U.S. FTA authorises other countries or groups of countries to join the FTA upon approval by the original parties.
Annex I	Investment and services non-confirming measures, which consist of the following documents: - Formatting notes. - Oman Schedule. - U.S. Schedule.
Annex II	Investment and services non-confirming measures, which consist of the following documents: - Formatting notes. - Oman Schedule - U.S. Schedule.
Annex III	Financial services non-confirming measures, which consist of the following documents: - Oman formatting notes. - Oman Schedule. - U.S. formatting notes. - U.S. Schedule

Source: Compiled by the author from (Oman-U.S. FTA signed on 19 January 2006).

Appendix 4.1: Main questions discussed during semi-structured interviews

1) What do you think have been or will be the costs and benefits for Oman's membership to the WTO?

2) Do you think the U.S. FTA will benefit the Omani economy? How?

3) How difficult for Oman was to negotiate to join the WTO?

4) Why did Oman choose to be one of the first countries in the Gulf to negotiate an FTA with the United States?

5) Under which system, Oman's negotiating position was better?

6) Do you support the involvement of the Oman Chamber of Commerce and Industry (OCCI) and individual business people in trade agreements' negotiations? What is your view about the participation of the Omani private sector in both WTO and FTA negotiations?

7) What is your opinion about the future of the WTO, given the current difficulties facing the Doha Development Agenda negotiations? And, how do you think can Oman maximise the benefit of the multilateral trading system in light of these difficulties?

8) What are your personal expectations about the future of the Oman-U.S. FTA and the MEFTA project as a whole?

9) How do you evaluate Oman's administrative and technical capacity in the WTO in comparison with other members? What is needed, in your opinion, to improve this capacity in the future?

10) As you may know, the FTA with the U.S. includes additional obligations on issues such as labour, environment, investment, government procurement, services, and telecommunications. How do you perceive these WTO plus obligations and their potential impact on Oman and its trade?

11) Do you support the idea of involving members of Majlis AL-Shura (Consultative Council) and Majlis Al-Dawla (State Council) in presenting their views on free trade agreements before making new commitments under these agreements?

Appendix 4.2: A summary of the thesis and its main objectives prepared for the focus groups and the main topics intended to be discussed in the groups

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Overview

The study seeks to analyse Oman's membership to the WTO in comparison with its commitments under the FTA with the U.S. It aims primarily to determine which of the two trading system (WTO or the FTA) provides more considerate and flexible arrangements for Oman to enable it to achieve its trade interests. In order to achieve the aim of the research, thorough comparative analyses of some topics under the WTO and the FTA was conducted such as; government procurement, telecommunications, textiles, investment, rules of origin, market access, labour rights, and dispute settlement. The researcher also conducted semi-structured interviews with government officials, expertise, academics, and business people. The objective was to collect data about the interviewees' negotiating experiences and their views about Oman's position in the two trading systems and which system they believed to provide more flexible arrangements and better considers Oman's trade interests and help achieve its objectives.

Current status of the study

In order to collect more data and further analyse the research questions, the researcher seeks, at this stage, to conduct a focus group with some participants that are interested and involved in the trade and economic affairs of the country. The aim is to exchange views and opinions about certain issues related to the topic of the research as outlined below:

A) The future of the WTO and the Oman-U.S. FTA after George Bush's era.

B) The future of the economy of Oman in light of current obstacles in oil and gas industries. How would WTO membership help Oman overcome these obstacles?

C) Oman-China trade relations. How can they be improved in the future?

D) Oman-Iran trade relations. How can they be improved in the future?

E) Oman-India trade relations. How can they be improved in the future?

Note: The topic is a living one, highly interesting, and important for Oman's trade and economy. The aim of the discussions is mainly to exchange ideas and views about the above-mentioned issues in an informal educational environment.

Appendix (5.1): A summary of the comparative analysis between dispute settlement procedures that have to be taken in labour/environmental issues with other types of disputes under the FTA.

The stage	Non-labour/environmental cases	Labour/environmental cases
Consultations Article 16.6 Article 20.5	Either party can make a request for consultations	Consultations can be conducted as followings: - Stage one: under Article 16.6 (labour): Consultations shall commence within 30 days after the delivery of notification. - Stage two: under Article 16.6 (labour): If consultations fail, either party can resort to the SLA which shall convene within 30 days of the request. - Stage three: under Article 20.5 (dispute settlement): Either party can request for consultations
Joint Committee Article 20.6	If consultations fail to resolve the matter within 60 days after the delivery of the request for consultations, or 20 days for perishable goods, either party may refer the matter to the JC.	The same provision is applicable
Establishment of the panel Article 20.7	- If the JC could not resolve the matter within 60 days, or 30 days for perishable goods; either party may refer the matter to a dispute settlement panel by delivering a request to the other party. - The panel shall have three members. Each party appoints one panelist within 30 days after the matter has been referred to the panel - Both parties shall agree on the third panelist within 30 days. - If they do not agree the party chosen by lot shall select within 5 days a third panelist; the chair. - The total period of appointing panels' members is 65 days	The same provision is applicable
Panel report Article 20.9	- The initial report shall be presented to the parties within 180 days after the chair is appointed. - The final report shall be presented to the parties within 45 days of presenting the initial report. - The parties shall release the report to the public within 15 days thereafter.	The same provision is applicable

Dealing with the panel report Article 20.10	The parties negotiate to reach a resolution within 45 days of receiving the final report	The same provision is applicable
Compensation Article 20.11.1	If no resolution is reached, the parties shall negotiate on compensation within 30 days	This provision is not applicable to labour/environmental disputes.
Suspension of benefits Article 20.11.2	- If no agreement on compensation is reached, the complaining party may at any time thereafter provide written notice to the other party that it intends to suspend the application of benefits to the other party of equivalent effect. - The complaining party may begin suspending benefits 30 days after its notice	This provision is not applicable to labour/environmental disputes.
Reconvention of the panel Article 20.11.3 Article 20.12	If the party complained against considers that: a) the proposed level of benefits to be suspended is manifestly effective or, b) it has eliminated the non-conformity or the nullification or impairment that the panel has found, it may request that the panel to be reconvened to consider the matter. - The request must be made within 30 days after the notice of the complaining party for suspension. - The panel shall reconvene as soon as possible after the request and shall present its determination within 90 days of its reconvention if the matter is about either a) or b). But if the matter is about them both; i.e. a) and b), the determination of the reconvened panel shall be within 120 days	If the panel has determined in its final report that a party has not conformed with its obligations under Article 16.2.1(a) for labour standards – or Article 17.2.1(a) for environmental standards – and the parties are unable to agree about a resolution within 45 days of receiving the final report; the complaining party may at any time thereafter request that the panel to be reconvened to impose an annual monetary assessment on the other party. **Notes:** - In labour/environmental disputes, no opportunities for compensations or suspension of benefits, as in other cases. - The panel in labour/environmental disputes is reconvened upon the request of the complaining party, whereas in other cases upon the request of the party complained against. - The purpose of reconvention of the panel, in labour/environmental disputes, is to impose annual monetary assessment (obligatory). - But in other cases, the panel is reconvened to look into the complaint of the party complained against about the extent to which the level of suspension of benefits is manifestly excessive or that it has eliminated the non-conformity or the nullification or impairment.
Annual monetary assessment	- The complaining party may not suspend the benefit, if the other party notifies it that it will pay an annual assessment. - The parties shall consult to agree about the amount of the assessment, beginning 10 days after the notification. - If no agreement is reached, the amount of assessment, in	- The monetary assessment is imposed by the panel. - The party complained against has no choice and there is no consultation on the amount of the assessment which shall not exceed $ 15 million annually.

	U.S. dollars, shall be equal to 50 percent of the level of the benefits.	
Payment of the monetary assessment	- Unless the Joint Committee decides otherwise, a monetary assessment shall be paid to the complaining party in U.S. currency, or in equivalent amount of Omani currency in equal quarterly installments beginning 60 days after the party complained against gives notice that it intends to pay an assessment.	- On the same date on which the panel determines the amount of the assessment, the complaining party may provide notice to the other party demanding payment of the monetary assessment. - The monetary assessment shall be payable in U.S. currency, or in equivalent amount of Omani currency, in equal, quarterly installments beginning 60 days after the complaining party provides such notice. **Notes:** - In non-labour/environmental disputes, the party complained against gives notice that it intends to pay the assessment. There is no specific time for this party to provide its notice. - But, in labour/environmental disputes, the complaining party is the one which demands the payment, which can be immediately on the same day of the panel's determination.
The role of the Joint Committee in the payment	- The JC **may** decide that the amount to be paid into a fund established by the JC and expended at the direction of the JC for appropriate initiatives to facilitate trade between the parties.	- Assessment **shall** be paid into a fund established by the JC and shall be expended at the direction of the JC for appropriate labour or environmental initiatives, including efforts to improve or enhance labour or environmental law enforcement in the territory of the party complained against consistent with its law. - The JC **shall** consider the views of interested persons in each party's territory about how to expend monies into the fund. **Notes:** - In non-labour/environmental disputes the role of the JC is voluntary; as it may decide that the amount to be paid into a fund that can be used for further trade facilitation between the parties. - But, in labour/environmental disputes, the role of the JC is obligatory as it must establish a fund into which the amount must be paid, and must be used to improve labour and environmental standards in the party complained against. - Ironically, this implies that if the party complained against, which is likely to be Oman in most cases, does not enforce the labour and environmental standards, the complaining party, which is likely to be the U.S., will make Oman pay for it!
Failure of paying the monetary assessment	If the party complained against fails to pay a monetary assessment, the complaining party may suspend the application of benefits.	If the party complained against fails to pay a monetary assessment, and if the party has created an escrow account to ensure payment of any assessments against it, the other party shall, before resorting to any measure, seek to obtain the funds from the account. - But, if the complaining party cannot obtain the funds from the other party's escrow account within

		30 days of the date on which payment is due, or if the other party has not created an escrow account, the complaining party may take other appropriate steps to collect the assessment. - These steps may include suspending tariff benefits under the FTA as necessary to collect the assessment. **Notes:** It can be realised that in all cases; including labour disputes, suspensions of benefits would be the final choice for the complaining party, if payment of monetary assessment is not achieved. But, in non-labour/environmental disputes, the party complained against is given an early chance to object to the level of suspension if it feels it is manifestly excessive, but in labour/environmental cases such a chance is not provided at all. If it fails to pay the monetary assessment, it has to accept the level of suspension that the complaining party decides as necessary to collect the assessment, even if this level of suspension is manifestly excessive.

Source: Compiled by the author from (Oman-U.S. FTA: Chapters sixteen and twenty).

Appendix (5.2): Special provisions in the DSU for developing countries

Article details	Substance summary
Article 4.10, Consultations	During consultations, members should give special attention to the particular problems and interests of developing countries such as Oman.
Article 8:10, composition of panels	If a dispute takes place between a developing and a developed country, the former can request that the panel shall include at least one panelist from a developing country.
Article 12:10, Panel procedures	- In a situation where consultations is held on a measure taken by a developing country, the parties may agree to extend the normal periods set out for consultations. - Even if consultations are not concluded during the extended periods, the Chairman of the DSB will decide, after consultation with the parties, whether, or not to extend the period and for how long. - In cases of examining a complaint against a developing country member, the panel shall accord sufficient time for this member to prepare and present its argumentation.
Article 12:11, Panel procedures	In situations where one or more of the parties to a dispute is a developing country, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and most-favourable treatment for developing country members that form part of the covered agreements, which have been raised by the developing country member in the course of the dispute settlement procedure.
Article 21:2, Surveillance of implementation of recommendations and rulings	Surveillance of the implementation of adopted recommendation or rulings should pay particular attention to the matters affecting the interests of developing countries.
Article 21:7 and 21:8, Surveillance of implementation of recommendations and rulings	In cases brought by a developing country, the DSB will consider what further action – apart from the normal surveillance mechanism – might be taken, having regard to the trade coverage of measures complained of and their impact on the economy of the developing country member.
Article 27:2, Responsibilities of the Secretariat	A qualified legal expert from the WTO Technical Co-operation Services will be available to provide legal advice and assistance for developing countries.

Source: Compiled by the author from (WTO, 1995p, Dispute Settlement Understanding).

Appendix (5.3): A comparative analysis of the length of time that the dispute settlement process takes in the WTO and the FTA

The stage	The period in the FTA	The period in the WTO	Notes
Consultations	- 60 days of the delivery of the request for consultative. - 20 days in case of perishable goods.	60 days after the date of receipt of the request for consultations. - 20 days in cases of urgency including perishable goods.	There are no details provided in the FTA about how the time details are specified, but under the WTO there are specific time details on how the process is conducted.
Maximum specified time	60 days or 20 days (perishable goods)	60 days or 20 days (urgency)	
Joint Committee	60 days after the delivery of the notification to refer the matter to the JC. - 30 days in cases of perishable goods.	Not applicable	
Maximum specified time	60 days or 30 days (perishable goods)	Not applicable	
Establishment of the panel	- Each party appoints one panelist within 30 days after the matter has been referred to the panel - Both parties shall agree on the third panelist within 30 days after the second panelist has been appointed. - If they do not agree the party chosen by lot shall select within 5 days a third panelist; the chair.	Up to 45 days for a panel to be appointed	
Maximum specified time	65 days	45 days	
Panel report	- The initial report shall be presented to the parties within 180 days after the chair is appointed. - The final report shall be presented to the parties within 45 days of presenting the initial report. - The parties shall release the report to the public within 15 days thereafter.	- The panel's final report should normally be given to the parties within 6 months (3 months if in cases of urgency). - Only if the panel finds itself unable to issue the final report within 6 months, the period can be extended. But, in any case the period from the establishment of the panel to circulation of the report to WTO members (DSB) shall not exceed 9 months in any case	- Unlike the WTO, no special provision provided for perishable goods in the FTA panel report.
Maximum specified time	240 days	- 270 days (if the panel's final report takes 9months) - 180 days (if the panel's final report takes 6 months)	
Dealing with the panel report	The parties negotiate to reach a resolution within 45 days of receiving the final report	Within 60 days after the date of circulation of a panel report to the members, the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to	At this stage, the dispute settlement procedures can be shifted to implementation in both systems; i.e. if

		appeal or the DSB decides by consensus not to adopt the report.	resolution is reached under the FTA,or the DSB adopts the report without an appeal from the offending party.
Maximum specified time	45 days	60 days	
Approximate total of period if no appeal is made	470 days	- 435 days (if the panel's final report takes 9months) - 345 days (if the panel's final report takes 6 months)	It can be realised that in case of no appeal is made, dispute settlement takes much shorter time in the WTO (345 or 435 days) than under the FTA (470 days)
Appeal report	Not applicable	- The appeal procedures shall not exceed 60 days from the date a party to the dispute notifies the DSB about its decision to appeal the panel report to the date the AB circulates its report. -But, if the AB considers that it will not be able to present its report within 60 days, it must inform the DSB in writing about reasons for the delay and give an estimation of the additional time required to submit its report to the DSB. But, this additional time must not exceed 30 days. Thus, the whole appeal process must not exceed 90 days	
DSB adoption of the AB reports	Not applicable	The DSB must adopt the AB report within 30 days of its circulation to the WTO members	
Maximum period of time for the whole appeal process	Not applicable	- 120 days (in case AB requests additional time to present its report to the DSB) - 90 days (in cases AB does not require additional time)	
Approximate total of periods if appeal is made	470 days (the same as there is no chance for an appeal)	- 435 days (345+90), if the panel and the AB do not require additional time to present their report). - 465 days (345+120) (if the panel does not request additional time to present its report but the AB takes additional 30 days to present its report to the DSB). - 525 days (435+90) if the panel's final report takes 3 months additional time to present its report but AB does not take additional time to present its report to the DSB). - 555 days (435+120), if both the panel and the AB take additional time to present their reports)	

Source: Compiled by the author from (WTO, 1995p, Dispute Settlement Understanding; Oman-U.S. FTA: Chapter Twenty).

Appendix 6.1: The first letter dated September 15, 1993 sent from Chairman, Committee for the Implementation of Textile Agreements in the U.S to the Commissioner of Customs regarding the restrictive quota of Omani textile products exported to the United States

Trade Compliance Center

OMAN VISA ARRANGEMENT REGARDING TEXTILES AND TEXTILE PRODUCTS

Committee for the Implementation of Textile Agreements September 15, 1993.
Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and pursuant to the Export Visa Arrangement, effected by exchange of notes dated May 29, 1993 and July 14, 1993, between the Governments of the United States and the Sultanate of Oman; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 1, 1993, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 200-239, 300-369, 400-469, 600-670 and 800-899, including merged Categories 340/640, 341/641 and 347/348, produced or manufactured in Oman and exported from Oman on and after October 1, 1993 for which the Government of the Sultanate of Oman has not issued an appropriate export visa fully described below. Should additional categories, merged categories or part categories be added, the entire category(s) or part category(s) shall be included in the coverage of this arrangement on an agreed effective date.

A visa must accompany each commercial shipment of the aforementioned textile products. A circular stamped marking in blue ink will appear on the front of the original commercial invoice. The original visa shall not be stamped on duplicate copies of the invoice. The original invoice with the original visa stamp will be required to enter the shipment into the United States. Duplicates of the invoice and/or visa may not be used for this purpose.

Each visa stamp shall include the following information:

1. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numerical digit for the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO)(the code for the Sultanate of Oman is "OM"), and a six digit numerical serial number identifying the shipment; e.g., 3OM123456.

2. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

3. The signature of the issuing official.

4. The correct category(s), merged category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and the Harmonized Tariff Schedules (HTS) shall be reported in the spaces provided within the visa stamp (e.g., "Cat. 434-210 DOZEN").

Quantities must be stated in whole numbers. Decimals or fractions will not be accepted. Merged category quota merchandise may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment (e.g., Categories 347/348 may be visaed as

347/348 or, if the shipment consists solely of 347 merchandise, the shipment may be visaed as "Cat. 347," but not as "Cat. 348").

U.S. Customs shall not permit entry if the shipment does not have a visa, or if the visa number, date of issuance, signature, category, quantity or units of quantity are missing, incorrect or illegible, or have been crossed out or altered in any way. If the quantity indicated on the visa is less than that of the shipment, entry shall not be permitted. If the quantity indicated on the visa is more than that of the shipment, entry shall be permitted and only the amount entered shall be charged. If the visaed invoice is deficient, U.S. Customs will not return the original document after entry, but shall provide a certified copy of that visaed invoice for use in obtaining a new correct original visaed invoice.

The complete name and address of a company actually involved in the manufacturing process of the textile product covered by the visa shall be provided on the textile visa document.

If the visa is not acceptable then a new correct visa must be obtained from the Government of the Sultanate of Oman, or a visa waiver may be issued by the U.S. Department of Commerce at the request of the Government of the Sultanate of Oman, and presented to the U.S. Customs Service before any portion of the shipment will be released. The waiver, if used, only waives the requirement to present a visa with the shipment. It does not waive the quota requirement.

If import quotas are in force, U.S. Customs Service shall charge only the actual quantity in the shipment to the correct category limit. If a shipment from Oman has been allowed entry into the commerce of the United States with either an incorrect visa or no visa, and redelivery is requested but cannot be made, U.S. Customs shall charge the shipment to the correct category limit whether or not a replacement visa or visa waiver is provided.

Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$250 or less, do not require a visa for entry and shall not be charged to agreement levels.

A facsimile of the visa stamp and a list of Omani officials authorized to sign export visas are enclosed with this letter.

The actions taken concerning the Government of the Sultanate of Oman with respect to imports of textiles and textile products in the foregoing categories have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1). This letter will be published in the Federal Register.

Sincerely,

Rita D. Hayes

Chairman, Committee for the Implementation of Textile Agreements.

Source: U.S. Committee for the Implementation of Textiles Agreement (1993, pp.1-3).

Appendix 6.2: The second letter dated August 25, 1994.sent from Chairman, Committee for the Implementation of Textile Agreements in the U.S to the Commissioner of Customs regarding an amendment on the restrictive quota of Omani textile products exported to the United States.

Committee for the Implementation Of Textile Agreements

August 25, 1994.
Commissioner of Customs, Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 15, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directed you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Oman for which the Government of the Sultanate of Oman has not issued an appropriate visa.

Effective on October 1, 1994, you are directed to amend the September 15, 1993 directive to include the coverage of cotton, man-made fiber, silk blend and other vegetable fiber textile products in merged Categories 334/634, 335/635 and 647/648/847, produced or manufactured in Oman and exported from Oman on and after October 1, 1994. Merchandise in Categories 334/634, 335/635 and 647/648/847 may be accompanied by either the appropriate merged category visa or the correct category visa corresponding to the actual shipment.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C 553(a)(1).

Sincerely,

Edwin E. Maddrey,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Source: U.S. Committee for the Implementation of Textiles Agreement (1994, pp.1-3).

Appendix (6.3): Comparative analysis between the Agreement on Government Procurement (GPA) and chapter nine of the FTA: part two.

1. Transparency and publications

Articles 9.3 of the FTA and XIX of the GPA require parties to publish laws, regulations, and any other provisions regarding a covered procurement. The objective is that all parties should be acquainted with the required information related to the GP of other parties, so that they can all equally compete for GP supplies and services based on the same level of information. However, there are some differences between the two agreements. Firstly Article XIX.1 requires each party to the GPA to specify in Appendix IV all types of publications in which procurement measures are publicised. The U.S. under the GPA, for instance, has made the commitments to publish laws, judicial decisions, and administrative rulings and procedures for entities listed in its Annex 1 of Appendix I in the Federal Acquisition Regulations (FAR), and for entities listed in Annexes 2 and 3 of Appendix I, in the relevant state and local publications or directly from the listed entities. This implies that under the GPA, other parties that are interested in competing in the GP market of the U.S. know where to find the legal measures related to the U.S. GP, but this may not be the case under the FTA as there are no similar specifications required. Article 9.3.1 only requires that procurement measures to be published in *officially designated electronic or paper media that are widely disseminated and remain readily accessible to the public*. Secondly, Article 9.3.1 of the FTA requires the two parties to promptly publish any changes to any procurement measures. However, the GPA does not contain a similar obligation.

Thirdly, Article 9.3.2 of the FTA and Article XIX.1 of the GPA require parties to provide, upon request from other parties, an explanation about their GP procedures. However, the wordings of the former seem to be quite more rigid than the latter. Article 9.3.2 states that *[e]ach Party shall, on request of the other Party, promptly provide an explanation relating to any such measure to the requesting Party*. The terms "*shall*" and "*promptly*" clearly make the Article very obligatory. If the U.S., for instance, asks Oman to explain any procurement measure, Oman is obliged to respond *promptly* to such a request. A failure to do so could be regarded as a failure to adhere to the FTA's rulings. Nevertheless, the word *promptly* is ambiguous and may entail different meanings. On the other hand, Article XIX.1 states that *[e]ach Party shall be prepared, upon request, to explain to any other Party its government*

procurement procedures. Hence, these wordings are clearly less imperative than those of Article 9.3.2 of the FTA.

1.1. Intended and planned procurement

Article 9.4.1 of the FTA obliges procuring entities to publish a notice through which it invites interested suppliers to participate in the intended procurement or submit tenders. The notice shall be made for *each covered procurement*. Article IX.1 of the GPA provides similar obligations but further specifies special requirements for "limited tendering". According to Article XV, "limited tendering" is a process where a covered entity contacts potential suppliers individually and directly. Such contacts can be in situations when the product or service can be supplied only by a particular supplier or for reasons of extreme urgency brought about by events unforeseeable by the entity. Hence, Article XV requires that the notice for intended procurement shall indicate the usage of limited tendering and the direct negotiations between the procuring entity and suppliers making tenders. However, the FTA does not provide similar publication requirements for limited tendering, which makes the GPA more transparent in this respect.

Furthermore, Article 9.4.1 of the FTA requires that the notice for intended procurement to be *published in an electronic or paper medium that is widely disseminated and readily accessible to the public for the entire period established for tendering*. But, Article IX.1 of the GPA requires the notice to be *published in the appropriate publications listed in Appendix II* for each party. Perhaps, specifying the types of publications makes it easier for any interested supplier to be aware of the intended procurement of other parties. But, under the FTA publications are not specified.

Moreover, Article 9.4.2 of the FTA lists the details that must be included in each notice of intended procurement. These details are: (a) the name and address of the procuring entity and any other information necessary to contact the procuring entity and obtain all relevant documents relating to the procurement, (b) a description of the procurement, including the nature, scope, the quantity of the goods or services to be procured and any conditions for participation, (c) the time frame for the delivery of goods or services, (d) the procurement method that will be used, (e) the address and the time limit for the submission of tenders, and where appropriate, any time limit for the submission of an application for participation in a procurement; and (f) an indication that the procurement is covered by chapter nine of the

FTA. Article IX.6 of the GPA requires similar information to be included in each notice of intended procurement, but differs in that it further requires the inclusion of other more details than Article 9.4.2 of the FTA. These are; namely, a) information about any options for further procurement with details about the nature and quantity of the recurring contract, and, the expected timing of the subsequent tender notices for the products or services to be procured, b) whether the procedure is open or selective or will involve negotiation; c) any economic and technical requirements, financial guarantees and information that are required from suppliers, d) the amount and terms of payment of any sum payable for the tender documentation. In addition, Article IX.8 of the GPA requires covered entities to publish, for each case of intended procurement, a summary in one of the official languages of the WTO, which shall include; the subject matter of the contract, (b) the time-limits set for the submission of tenders or an application to be invited to tender; and c) the addresses from which documents relating to the contracts may be requested. This requirement does not exist in the FTA.

Article 9.4.3 of the FTA urges both Oman and the U.S. to encourage their procuring entities to publish in each fiscal year a notice regarding their procurement plans. The notice should include the subject matter of any planned procurement and the estimated date of the publication of the notice of intended procurement. Article IX.7 of the GPA makes a similar consideration, but with more details. The Article emphasises that each notice of planned procurement shall firstly contain as much of the details that are required to be listed in the notices of intended procurement and a statement through which interested suppliers express their interest in the procurement to the entity, and a contact point with the entity from which further information may be obtained. These considerations are not found in the FTA.

Furthermore, Article IX.3 of the GPA allows sub-central entities and other entities and enterprises that are covered in Annexes 2 and 3 of each party to use a notice of planned procurement as an invitation to parties. This is a flexible aspect as these entities do not have to issue notices of intended procurement if they have already issued notices of planned procurement. They only have to subsequently invite all suppliers who have expressed their interests in the planned procurement to confirm their interest. However, under the FTA notices of planned procurement are not enough and notices of intended procurement must be issued as invitations for suppliers.

1.2. Publication of award information

Articles 9.9 of the FTA and XVIII of the GPA require each covered procuring entity to publish a notice containing the details of the awarded contract such as; the name and address of winning supplier and the procuring entity, a description of the products procured, the date of the award, the contract value, and the procurement method used to evaluate the contract. However, Article 9.9.9 requires the procuring entity to publish the awarding notice no later than 60 days but Article XVIII.1 requires a longer period of 72 days after the contract is awarded.

Moreover, both agreements allow the losing suppliers the right to know how the tender and the evaluation procedures were used and to be exposed to reasons for their loss and the basis on which the winning supplier was selected. The aim is to ensure that procurement contracts are awarded fairly and impartially. But, there are some noticeable differences between the two agreements in this respect. Firstly, Article 9.9.10 of the FTA requires the request for the explanation to be made by one of the parties; i.e. the Government of Oman or the Government of the U.S. This implies that suppliers can not directly make such a request to a procuring entity. Interestingly, this mechanism of making governments the main actors in trade agreements are one of the main principles of multilateral trading system. However, as is demonstrated in the comparative analysis on "investment", the FTA is not consistent in this respect because private businesses and suppliers can raise a dispute against another party's government; i.e. they can be a party to a dispute against the other party's government. On the other hand, under Article XVIII.2 of the GPA, the request can be made directly by the suppliers to the procuring entity; i.e. there is no need to make the request via their governments. Hence, if Oman becomes an official party to the GPA, its Government entities will have to deal directly with suppliers' requests from other parties to the GPA. This plurilateral mechanism of the GPA does not go along with the principle of governments' acting of the MTS.[1]

[1]Despite their emphasis on transparency and their obligatory conditions to parties to provide details about procurement of their covered entities before and after the award of contracts, both the FTA and the GPA -- in Article 9.13.1 and Article XIX.4 -- permit parties not to disclose confidential information which would prejudice the legitimate commercial interests of a particular enterprise or person or might prejudice fair competition between suppliers, without the authorisation of the person which provided the information.

2. Measures related to tender process

2.1. Time limitation for tender process

Articles 9.5 of the FTA and XI of the GPA emphasise the necessity of allowing suppliers sufficient time to prepare and submit responsive tenders, taking into account the nature and complexity of the procurement. However, Article XI is more detailed in that it requires parties when setting the final date for receipt of tenders to consider factors such as the anticipated length of subcontracting, *the normal time for transmitting tenders by mail from foreign as well as domestic points*, and publication delays. Also, Article XI.4 requires parties, when setting any delivery date, to consider factors such as *the complexity of the intended procurement, the extent of subcontracting anticipated and the realistic time required for production, de-stocking and transport of goods from the point of supply or for supply of services*. These special considerations do not exist in the FTA.

Moreover, as a general rule, the minimum period set out by Articles 9.5 and XI from the date of publication of an invitation to tender to the deadline for submission of tenders shall be no less than 40 days. However, both Articles set out special circumstances where the 40-day minimum period can be reduced to lower periods. But, in no case can the minimum period be reduced to less than 10 days. The first of these special circumstances is where a procuring entity has published a separate notice, including a notice of planned procurement, at least 40 days and not more than 12 months in advance, before the date of publication of an invitation to tender. The notice should contain details about the nature of the procurement, the entity concerned, and time limitations for the submission of tenders, or applications for participation in procurement. The idea is that suppliers are already informed about the procurement details, at least 40 days before. Thus, any supplier interested in competing for the procurement should have already prepared itself. But, if the notice was made more than 12 months in advance, details of the procurement could change and suppliers need a more updated invitation notice for the tenders; thus the time limits for tendering will be difficult to reduce less than 40 days.

Furthermore, Articles 9.5 and IX allow parties to reduce the minimum 40-day period in cases of urgency that are duly substantiated by the entity making the procurement. But, the period can not be reduced less than 10 days from the date of the publication of the invitation. Nevertheless, Article 9.5.2.c puts stronger emphasis on the necessity that the state of urgency has to be: a) extreme, b) the events that cause the extreme urgency are unpredictable by the

procuring entity, and c) the 40-day deadline would result in serious adverse impact on the procuring entity or the relevant party. Thus, unless the procuring entity is able to demonstrate the occurrence of extreme urgent events and their adverse impact, the procuring entity will not be able to reduce the 40-day period. But, Article XI does not put such emphasis, which could imply that parties may reduce the minimum 40-day period in any case they consider as urgent, without having to prove that the event was extremely urgent or it had an adverse impact on the procuring entity.

Also, Article 9.5.2.b of the FTA permits Oman and the U.S. to reduce the minimum 40-day period in cases where a covered entity procures commercial goods or services. The latter are defined by Article 9.15 as those *sold or offered for sale to, and customarily purchased by, non-governmental buyers for non-governmental purposes*. The idea seems to be that these goods and services are normally available in the market place and sold or purchased for non-governmental purposes. Moreover, in cases where the procuring entity publishes a notice of intended procurement in an electronic forum, Article 9.5.3 of the FTA permits procuring entity to reduce the time limit for submission of a tender or an application for participation by up to five days, below the 40-day period; i.e. to 35 days. This may be because publishing the intended notice electronically takes shorter time than other means of publications. However, there are no similar provisions in the GPA, which implies that the 40-day period can not be reduced on the basis that the procurement is conducted on commercial goods or services or the notice of intended procurement has been published electronically.

Interestingly, however, Article IX.3.b of the GPA provides that the minimum 40-day period for receipt of tenders may be reduced to no less than 24 days in cases of the *second or subsequent publications dealing with contracts of a recurring nature*. The idea seems to be that details of recurring contracts are already known to suppliers and these details are repeated in second and subsequent publications. Yet, in order for this provision to be applicable to recurring contracts, details of the invitation notice for first contracts have to be the same details in second and subsequent publications. However, the FTA does not entail a similar provision, which implies that the minimum period can not be reduced below 40 days on the basis of the recurring nature of contracts.

2.2. Tender documentation

Articles 9.6 of the FTA and XII of the GPA require procuring entities to provide interested suppliers with all necessary documents related to the procurement, so that the suppliers can be prepared and submit responsive tenders. The documents shall include information on a full description of the procurement, its nature, scope, and quantity of the goods or services to be procured. Tender documentation shall also include any technical specifications, conformity certification, plans, drawings, or instructional materials. Also, suppliers shall be provided with all information related to any conditions for participation, including any financial guarantees and other documents that suppliers are required to submit. All criteria that are considered in the awarding to the contracts, as well as the date, time, and place for opening tenders and any other terms of conditions, including terms of payment relating to procurement must be made known to suppliers. Both Articles oblige procuring entities to reply to any reasonable request for relevant information by a supplier, provided that such information does not give that supplier an advantage over its competitors in the procurement. Nevertheless, Article XII of the GPA requires procuring entities to provide additional details to suppliers that are not stated in Article 9.6 of the FTA, such as; (a) the address of the entity to which tenders should be sent, (b) the address where requests for supplementary information should be sent, (c) the language or languages in which tenders and tendering documents must be submitted, (d) the closing date and time for receipt of tenders and the length of time during which any tender should be open for acceptance, and (e) the persons authorised to be present at the opening of tenders and the date, time and place of this opening.

2.3. Technical specifications

Technical specifications, as defined in Articles VI of the GPA and 9.15 of the FTA, are the tendering requirements which set out the characteristics of the products or services procured. These characteristics can be; quality, performance, safety, symbols, packaging, making and labeling, or the process and methods for their production and requirements relating to conformity assessment procedures prescribed by procuring entities. Both Articles VI and 9.6 prohibit using technical specifications as obstacles to international trade. These specifications must be based on performance and functional requirements, rather than design or descriptive characteristics.

Also, both Articles require procuring entities to base their technical specifications on international standards. But, if such standards do not exist they shall be based on national standards. However, it may be noticed that Article 9.6.4.b of the FTA, in addition to its emphasis on the existence of international standards, further requires the following conditions; (a) such standards are applicable to the procuring entity, (b) they meet the procuring entity's programme, and (c) will not impose more burden than the use of national standards. These additional conditions seem to particularly reflect the U.S. protectionist policies of its domestic industries. Any U.S. covered entities can claim that it ought to apply its own technical specifications, which may not be compatible with international standards, because the latter do not meet its programme or impose more burdens on it. The extent to which such claims may be true would be difficult to verify by Oman. Thus, Omani suppliers, if they opt to compete in the U.S. government procurement market, will likely find themselves confronted by U.S. national technical specifications that are not compatible with international standards, and which provide U.S. domestic suppliers an advantage over their competitors. However, the situation under the GPA is more clear-cut; as technical specifications shall be based on international standards, and only if the latter do not exist, national standards are the alternatives.

In addition, Articles 9.6.5 of the FTA and VI.3 of the GPA prohibit parties to prescribe technical specifications that require or refer to particular trademark or trade name or patent, copyright or specific design, producer or supplier. Only if there is no other sufficient way to describe the procurement requirements, references to these issues can be made provided that words such as "or equivalent" are included in the tender documentation. The idea is to avoid any discriminatory means that can be pursued by any party or their covered procuring entities in favour of particular suppliers by including their trademarks or their specific design, so that they can be placed at a more favourable competitive advantage over other suppliers. Nevertheless, it is interesting to note that the emphasis of Article 9.6.5 of the FTA on this prohibition seems less obligatory than Article VI.3 of the GPA. Article 9.6.5 begins by stating that *[a] procuring entity may not prescribe technical specifications that require or refer to a particular trade mark.*. but Article VI.3 is more decisive as it states that *[t]here shall be no requirement or reference to a particular trademark or trade name, patent.*. Thus, the usage of the verb "may not" in Article 9.6.5 could create a loophole that can be exploited by any U.S. covered entity to include specific U.S. trade mark or trade name or design of a particular U.S. company.

Moreover, Articles 9.6.6 of the FTA and VI.4 of the GPA prevent any covered procuring entity from seeking or accepting advice that may be used in the preparation or adoption of any technical specification for a specific covered procurement in which the person or firm which has provided the advice has a commercial interest in the procurement. The objective is to achieve integrity and neutrality when carrying out the procurement as the technical specifications that are based on the advice of the person or firm will be likely affected by its commercial interests. However, once again, Article 9.6.6 is less imperative and less obligatory than Article VI.4 of the GPA. Article 9.6.6 uses the verb "may not" to prohibit a procuring entity from seeking or accepting the advice of a person that has a commercial interest in the procurement, while Article VI.4 uses the verb "shall not". This could also be a potential loophole that may be exploited by procuring entities in the U.S. Furthermore, Article 9.6.7 of the FTA allows procuring entities to prepare, adopt, or apply technical specifications for the purpose of promoting the "conservation of natural resources" or protecting the environment. This provision can be used as a means of protections for U.S. domestic suppliers by obliging Omani bidders to meet strict environmental specifications that go beyond their capacity. The GPA 1994 does not have a similar provision.

Articles 9.6.8 of the FTA and IX.10 of the GPA permit procuring entities to make modifications on the criteria or the technical requirements that are originally outlined in an invitation notice or tender documentation. Both Articles require the procuring entity to transmit all the new modifications to all the concerned suppliers participating in the procurement and allow them adequate time to modify and resubmit their tenders on the basis of the new modifications. However, Article IX.10 clearly specifies that the period during which the modifications can take place and then have to be re-transmitted to all suppliers is *after publication of an invitation to participate in any case of intended procurement, but before the time set for opening or receipt of tenders as specified in the notices or the tender documentation*. Thus, the procuring entity can not make any changes after the time allocated for opening or receipt of tenders. But, no such clarification is made under Article 9.6.8 which states that the period where modifications can be made and have to be re-transmitted is *during the course of covered procurement*. This expression can entail different interpretations and be subject of disagreement in the future when the FTA is put into practice.

2.4. Conditions for participation / qualification of suppliers

Articles 9.7 of the FTA and VIII of the GPA provide guidelines to follow by procuring entities when initiating conditions for participations in tenders. However, there are some differences between the two Articles. Article 9.7.1.a requires procuring entities to;

> limit any conditions for participation in a covered procurement to those that are essential to ensure that a supplier has the legal, commercial, technical, and financial abilities to fulfill the requirements and technical specifications of the procurement.

In all these factors, Omani suppliers will face great difficulties to compete against U.S. firms. These incomparable differences are even further enforced by Article 9.7.1.b which requires that evaluating the financial, commercial and technical abilities of any supplier to be based on the global business activities of the supplier, which goes substantially in favour of the U.S. This evaluation of the global business activities should also include the supplier's activities in the territory of the party conducting the procurement but such activities must not be used as a pre-condition for the acceptance of suppliers to participate in the procurement. Hence, any procuring entity must not condition that in order for a supplier to be able to participate in a covered procurement that it must have been previously awarded one or more contracts or that it has working experience in the territory of the party of the procuring entity. Article VIII of the GPA provides similar provisions to those of Article 9.7.1 of the FTA but conditions that the whole process of qualifying suppliers and the evaluation of the technical, commercial, and financial capacity of suppliers must be based on non-discrimination between foreign and domestic suppliers. However, Article 9.7 of the FTA puts no reference to the non-discriminatory obligations when conditioning suppliers' participation.

Furthermore, Articles 9.7.2 of the FTA and VIII.g of the GPA permit procuring entities to exclude a supplier from procurement on grounds such as bankruptcy or false declaration. In addition, Article 9.7.2 unilaterally permits procuring entities to exclude a supplier on the ground of *significant deficiencies in performance of any substantive requirement or obligation under a prior contract*. This is a powerful tool for procuring entities to use against insufficient suppliers which fail to carry out their obligations under a prior contract. However, the expression "*significant deficiencies*" is not clear and could be subject to the sole interpretation of procuring entities. What if the supplier on whom such an action is practised objects to the decision of its exclusion, justifies that its obligations in previous contracts were carried out effectively, and claims that its exclusion is based on discriminatory

action by the procuring entity. The Article does not deal with such a situation, thus creating a potential loophole in the agreement. The GPA, on the other hand, does not contain similar provisions on excluding suppliers on the basis of "*significant deficiencies*".

2.5. Treatment of tenders

Articles 9.9 and XIII provide a set of guiding principles that have to be followed when receiving, opening, and awarding contracts. Firstly, in order to be considered for an award, a tender must, at the time of opening, conform to the essential requirements of the notices or tender documentation. Secondly, the tender must be from a supplier which complies with the conditions for participation. Thirdly, tender process shall be carried out in fair, impartial, and non-discriminatory manner. Fourthly, tenders shall be treated in confidence by a procuring entity or other relevant authority. Fifthly, in cases of any delay in the opening of a tender the cause of which is solely due to mishandling on the part of the procuring entity, the latter shall not penalise any supplier whose tender is submitted by the time specified for receiving tenders. Sixthly, the award shall be granted to the "tenderer" who is found by the procuring entity as fully capable of undertaking the contract and whose tender is either the lowest tender or the tender is determined to be the most advantageous solely on the basis of the requirements and evaluation criteria set out in the notices and tender documentation. However, both agreements permit a procuring entity or relevant authority not to award the contract even if these requirements are fulfilled by a supplier if it finds that the award will not be in public interest. .

3. Other important measures: rules of origin and offsets

The GPA and the FTA oblige parties to implement rules of origin (ROO), for purposes of covered procurement, in non-discriminatory manner. However, Article 9.2.3 of the FTA only refers to the application of ROO to imported goods, but Article IV of the GPA refers to imported goods and services. Conventionally, ROO relate to goods, but there has been increasing attentions in the literature of international trade on ROO to services, which is about the level of transformation required for a particular service to qualify for trade preferences (Hoekman, 1993; Fink and Nikomborirak, 2007). The emphasis of Article 9.2.3 on ROO to goods only will provide U.S. services suppliers that are established and operate in a third party to benefit from the open GP market in Oman, irrespective of their level of transformation or the extent to which they are originating U.S. firms. But, under the GPA, U.S. services suppliers must oblige by the ROO set out by other parties. Also, Article IV provides that the results of

the on-going multilateral negotiations on the issues of rules of origin and trade in services shall be taken into account to amend the Article to match these results.

In addition, Article 9.2.4 of the FTA strictly prohibits either party; Oman or the U.S., from imposing offsets measures[2]. However, the Article does not define what is meant by offsets in terms of government procurement. This lack of clarification might prove problematic and be subject of disagreement in the future as measures that are regarded by Oman as "normal", the U.S. might interpret them as "offsets". Nevertheless, the situation under the GPA, whose Article XVI also prohibits offsets measures, is much clearer. In a footnote to Article XVI.1, offsets in GP are defined to be those measures that are *used to encourage local development or improve the balance-of-payments accounts by means of domestic content, licensing of technology, investment requirements, counter-trade, or similar requirements.* More importantly, however, Article XXVI.2 provides an important exception for developing countries from which Oman can benefit if it became an official party to the GPA. The Article allows developing countries to negotiate, at the time of their accession to the Agreement, conditions for the use of offsets provided that these conditions are only used for the qualification of a particular industry to participate in the procurement process and not as criteria for awarding contracts. These conditions shall be clearly stated in the country's Appendix I and may include specific restrictions on the imposition of offsets in any contract subject to the GPA. This is an important flexibility that Oman can seek to benefit from in its negotiations, if it decides to become a party to the GPA. Such a policy choice is not available in the FTA.

4. Special considerations for developing countries' objectives

The GPA (Article V) provides special considerations for developing countries from which Oman may benefit, if it became a party to the GPA. These special considerations do not exist in the FTA. They were introduced with the hope that they could provide enough incentives for developing countries to join the GPA but, this hope has not been achieved due to the continuous rejection of developing countries to subject their GP to the regulations of the GPA. Article V.1 urges parties, when implementing the Agreement, to take into account the special needs of development, finance and trade of developing countries, particularly their

[2]. By their nature, "offsets" are discriminatory and protectionist measures that are resorted to by countries to encourage national development of a particular industry or stabilise the balance of payments. Thus, because of their contradiction with the NT and MFN principles, they are normally prohibited under trade agreements.

need to; 1) safeguard their balance-of-payments position and ensuring a level of reserve adequate for their economic development programmes, 2) promote the establishment and development of their domestic industries including the development of small-scale and cottage industries in rural or backward areas, and 3) support industrial units provided that these units are wholly or substantially dependent on GP. Article V.3 emphasises that these objectives shall be taken into account in negotiations with developing countries over their procurement lists. Article V.3 also urges developed countries when preparing their coverage lists to include entities procuring products and services of export that of interest to developing countries. Article V.4 further allows a developing country to exclude certain entities, products, or services from its coverage lists provided that a mutual agreement with other parties is reached about that. Thus, these provisions provide a legal ground for developing countries to justify their protection of infant industries by excluding certain procuring entities that are important for their development from the obligations of the GPA. These are important and useful provisions for a developing country such as Oman, particularly when considering the fact that such provisions are absent from the FTA.

Furthermore, Article V.8 requires developed country parties to provide all technical assistance needed by developing country parties to the GPA to resolve any problem they may face in the field of GP. This assistance, as per Article V.10, may include translation of qualification documentation and tender into an official language of the WTO. Article V.11 further requires a developed country party to establish information centers to respond to requests from developing country parties for information relating to different issues regarding GP such as laws, regulations, procedures, notices about intended procurements, and addresses of the entities covered by the GPA. Article V.14 requires the Committee on GP to annually review the operation and the effectiveness of Article V and to conduct a major review after every three years of its operation on the basis of reports to be submitted by parties. As part of these major reviews, the Committee is required to examine whether any exclusions for developing countries pursuant to Article V provisions should be modified or extended. All these opportunities are not available in the FTA.

Appendix (6.4): Oman' listed government entities in Annex 9 of the FTA

Sections	Government entities	Notes/ Exceptions
Section A: this applies to all agencies subordinate to the entities listed in each	- Ministry of Agriculture and Fisheries (Note 1) - Ministry of Religious Affairs (Note 2). - Ministry of Commerce and Industry - Ministry of Civil Service - Ministry of Education (Note 3) - Ministry of Foreign Affairs. - Ministry of Higher Education - Ministry of Housing, Electricity, and Water - Ministry of Information (Note 4) - Ministry of Heritage and Culture - Ministry of Finance - Ministry of Health - Ministry of Oil and Gas - Ministry of National Economy - Ministry of Justice - Ministry of Legal Affairs - Ministry of Manpower - Ministry of Regional Municipalities and Environment and Water Resources - Ministry of Social Affairs - Ministry of Sport Affairs - Ministry of Tourism - Ministry of Transport and Communications (Note 5) - Muscat Governorate - Public Authority for Social Insurance - Public Authority for Handcraft - State Audit Institution - Supreme Committee for Town Planning - Telecommunications Regulatory Authority - Sohar Refinery Company - High Committee for National Day - Oman Refinery Company - Public Establishment for Industrial Estates - Oman Oil Company	Note 1: For Ministry of Agriculture and Fisheries, chapter nine does not cover the procurement of agricultural goods made in furtherance of agricultural support programmes or human feeding ptogrammes. Note 2: For Ministry of Awqaf and Religious Affairs, chapter nine does not cover the procurement of construction services for buildings intended for religious purposes. Note 3: For Ministry of Education, this chapter does not cover the procurement of printed materials for educational purposes. Note 4: For Ministry of Information, this chapter does not cover the acquisition development, or production or programme distribution services. Note 5: For Ministry of Transport and Communications, this chapter does not cover procurement by the Civil Aviation Administration.
Section B: List A, Other covered entities	- Oman Gas Company - Oman Housing Bank - Oman Development Bank - Capital Market Authority/ Muscat Securities Market - Sultan Qaboos University	It is not clear why Oman has selected these particular entities to be under section B, List A, while others are chosen to be under section A.
Section B: List B	None	

Source: Chapter nine, Oman-U.S. FTA

Appendix (65)

January 19, 2006

H.E. Maqbool Bin Ali Sultan
Minister of Commerce and Industry
Ministry of Commerce and Industry
Sultanate of Oman

Dear Mr. Minister:

In connection with the signing on this date of the United States-Oman Free Trade Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and the Sultanate of Oman regarding Chapter Nine (Government Procurement) of the Agreement:

> With respect to procurement, the Sultanate of Oman Government does not exercise any undue control or influence in procurement conducted by Omantel, Petroleum Development Oman, and Oman Liquefied Natural Gas. The Sultanate of Oman shall ensure that all procurement by these entities is conducted in a transparent and commercial manner.

I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement.

Sincerely,

Rob Portman

Appendix 66

Sultanate of Oman
Ministry of Commerce and Industry
Muscat

سلطنة عمان
وزارة التجارة والصناعة
مسقط

مكتب الوزير
Minister's Office

January 19, 2006

The Honorable Robert J. Portman
United States Trade Representative

Dear Ambassador Portman:

I have the honor to acknowledge receipt of your letter of this date, which reads as follows:

> "In connection with the signing on this date of the United States-Oman Free Trade Agreement (the "Agreement"), I have the honor to confirm the following understanding reached by the Governments of the United States of America and the Sultanate of Oman regarding Chapter Nine (Government Procurement) of the Agreement:
>
> > With respect to procurement, the Sultanate of Oman Government does not exercise any undue control or influence in procurement conducted by Omantel, Petroleum Development Oman, and Oman Liquefied Natural Gas. The Sultanate of Oman shall ensure that all procurement by these entities is conducted in a transparent and commercial manner.
>
> I have the honor to propose that this letter and your letter in reply confirming that your Government shares this understanding shall constitute an integral part of the Agreement."

I have the honor to confirm that my Government shares the understanding expressed in your letter and that your letter and this letter in reply shall constitute an integral part of the Agreement.

Sincerely,

Maqbool Bin Ali Sultan

ص.ب : ٥٥٠ ، الرمز البريدي : ١١٣ مسقط – فاكس : ٢٤٨١٧٢٣٩ – ٢٤٨١٦٤٠٣ ، هاتف : ٢٤٨١٤٢٠١ – ٢٤٨١٠٢٠٩
P.O. Box : 550, Code No. : 113 Muscat, Fax : 24817239, 24816403 Telephone : 24814201 - 24810209
E-mail : info@mocioman.gov.om، البريد الإلكتروني - Website : www.mocioman.gov.om: موقع الوزارة

Appendix (6.7): A list of exceptions to U.S. covered entities under the GPA and the FTA

Government entities	Type of protection	Remarks
Department of Agriculture and Fisheries	U.S. commitment under both the GPA and the FTA does not cover the procurement of agriculture goods made in furtherance of agricultural support programmes or human feeding programmes	- Although this exception is similar to Oman's exception, there are big differences in its impact on the two countries. - The U.S. is an agricultural producing country whose competitiveness; either within or outside the country heavily depends on the different government supporting programmes to U.S. farmers; a protectionist policy that has for long created big conflict with developing countries. Thus, excluding the "procurement of agricultural goods made in furtherance of agricultural support programme" clearly implies that any agricultural support programme will not be subject to the non-discriminatory obligations of chapter nine of the FTA. - However, unlike the U.S., Oman is a substantially food importing country and the exclusion of procurement of agricultural goods made in furtherance of agricultural support programmes or human feeding programmes go along with this nature.
Department of Commerce	U.S. commitment under both the GPA and the FTA does not cover shipbuilding activities of the U.S. National Oceanic and Atmospheric Administration (NOAA).	Another type of protection by the U.S.
Department of Energy	U.S. commitment under both the GPA and the FTA does not cover national security procurements in support of safeguarding nuclear materials or technology and entered into under the authority of the Atomic Energy Act, or oil purchases related to the strategic Petroleum Reserve.	Another type of protection by the U.S. under the disguise of national security.
Department of Transportation	U.S. commitment under both the GPA and the FTA does not cover procurement by the Federal Aviation Administration	Oman has made a similar exception
General Services Administration	U.S. commitment under both the GPA and the FTA does not cover the procurement of goods in; hand tools, measuring tools, Cutlery and Flatware.	Another type of protection by the U.S.
United States Agency for International Development	U.S. commitment under both the GPA and the FTA does not cover procurement for the direct purpose of providing foreign assistance.	Procurement for providing foreign assistance can be exploited as a disguising discriminatory tool against foreign products.
Rural Utilities Service	Chapter nine only applies to one aspect of procurement; funding for all power generation projects. However, other aspects of procurement do not apply including any restrictions the Rural Utilities Service places on financing for telecommunications projects	

Source: Chapter nine, Oman-U.S. FTA

Appendix 6.8: U.S. sub-central government entities covered in Appendix I, Annex 2 to the GPA but not covered under the FTA

Sub-Central Government entities	Area of GP liberalisation
Arizona	Executive branch agencies
Arkansas	Executive branch agencies, including universities, but excluding the Office of Fish and Game and construction services
California	Executive branch agencies
Colorado	Executive branch agencies
Connecticut	Department of Administrative Services Connecticut Department of Transportation Connecticut Department of Public Work Constituent Units of Higher Education
Delaware	Administrative Services (Central Procurement Agency) State Universities State Colleges
Florida	Executive branch agencies
Hawaii	Department of Accounting and General Services (with the exception of procurements of software developed in the state and construction).
Idaho	Central procurement Agency (including all colleges and universities subject to central purchasing oversight)
Illinois	Department of Central Management Services
Iowa	Department of General Services Department of Transportation Board of Regents' Institutions (universities)
Kansas	Executive branch agencies, excluding construction services, automobiles and aircraft.
Kentucky	Division of Purchases, Finance and Administration Cabinet, excluding construction projects.
Louisiana	Executive branch agencies
Maine	Department of Administrative and Financial Services
Maryland	Office of the Treasury Department of the Environment Department of General Services Department of Housing and Community Development Department of Human Resources Department of Licensing and Regulation Department of Natural Resources Department of Public Safety and Correctional Services Department of Personnel Department of Transportation
Massachusetts	Executive Office for Administration and Finance Executive Office of Communities and Development Executive Office of Consumer Affairs Executive Office of Economic Affairs Executive Office of Education Executive Office of Elder Affairs Executive Office of Environmental Affairs Executive Office of Health and Human Service Executive Office of Labor Executive Office of Public Safety Executive Office of Transportation and Construction
Michigan	Department of Management and Budget
Minnesota	Executive branch agencies

Mississippi	Department of Finance and Administration (does not include services)
Missouri	Office of Administration Division of Purchasing and Materials Management
Montana	Executive branch agencies (only for services and construction)
New York	State agencies State university system Public authorities and public benefit corporations, with the exception of those entities with multi-state mandates. In addition to the exceptions noted at the end of this annex, transit cars, buses and related equipment are not covered.
Nebraska	Central Procurement Agency
Oklahoma	Office of Public Affairs and all state agencies and departments subject to the Oklahoma Central Purchasing Act, excluding construction services
Oregon	Department of Administrative Services
Pennsylvania	Executive branch agencies, including: Governor's Office Department of the Auditor General Treasury Department Department of Agriculture Department of Banking Pennsylvania Securities Commission Department of Health Department of Transportation Insurance Department Department of Aging Department of Correction Department of Labor and Industry Department of Military Affairs Office of Attorney General Department of General Services Department of Education Public Utility Commission Department of Revenue Department of State Pennsylvania State Police Department of Public Welfare Fish Commission Game Commission Department of Commerce Board of Probation and Parole Liquor Control Board Milk Marketing Board Lieutenant Governor's Office Department of Community Affairs Pennsylvania Historical and Museum Commission Pennsylvania Emergency Management Agency State Civil Service Commission Pennsylvania Public Television Network Department of Environmental Resources State Tax Equalization Board Department of Public Welfare State Employees' Retirement System Pennsylvania Municipal Retirement Board Public School Employees' Retirement System Pennsylvania Crime Commission Executive Offices

Rhode Island	Executive branch agencies, excluding boats, buses and related equipment
South Dakota	Central Procuring Agency (including universities and penal institutions)
Tennessee	Executive branch agencies (excluding services and construction) In addition to the exceptions noted at the end of this annex, procurements of beef are not covered.
Texas	Texas Building and Procurement Commission
Utah	Executive branch agencies
Vermont	Executive branch agencies
Washington	Washington State executive branch agencies, including: General Administration Department of Transportation State Universities - In addition to the exceptions noted at the end of this annex, procurements of fuel, paper products, boats, ships and vessels are not covered.
Wisconsin	Executive branch agencies, including: Department of Administration State Correctional Institutions Department of Development Educational Communications Board Department of Employment Relations State Historical Society Department of Health and Social Services Insurance Commissioner Department of Justice Lottery Board Department of Natural Resources Administration for Public Instruction Racing Board Department of Revenue State Fair Park Board Department of Transportation State University System
Wyoming	Procurement Services Division Wyoming Department of Transportation University of Wyoming

Source: WTO (2007t). GPA. United States: Appendix I, Annex 2

Appendix (6.9): A list of U.S. exceptions from its covered services under the GPA and the FTA

U.S. services exceptions: GPA and FTA	Notes
Research and development: all cases	Oman has made a similar exception. But, for the U.S., the exception of research and development is wider and constitutes far more important portion of government entities' activities. The exclusion of all classes of R&D from the non-discriminatory obligations allows the U.S. to support its national institutions against foreign firms.
*Information processing and related telecommunications services; which entail: - Telecommunications and transmission services, except: "enhanced" or value-added" services and the ownership or furnishing of facilities for the transmission of voice or data services. - Teleprocessing and timesharing services - Telecommunication network management services - Automated New Services, Data Services or Other Information Services. - Other ADP and telecommunication services.	These U.S. exceptions are wider and more detailed than those outlined in the schedule of Oman's exceptions. In most of these issues, the U.S. enjoys comparative advantages over Oman, but still seeks their protection.
*Maintenance, repair, modification, rebuilding and installation of goods/equipment, including: - Maintenance, repair, modification, rebuilding and installation of equipment related to ship - Non-nuclear ship repair	The same comment above.
* Operation of government-owned facilities: - All classes, with respect to all facilities of the Department of Energy and the National Aeronautics and Space Administration, - Research and Development, with respect to any procuring entity listed in Section A or B.	
* Utilities: all classes	The same comment above
* Transportation, travel, and relocation services: all classes except travel agent services.	The same comment above
Note (1) to the U.S. schedule of section D: Chapter nine does not cover the procurement of services purchased in support of military forces outside the U.S.	

Source: WTO (2007l,m,n,o,pt). U.S. Appendix I to GPA, Oman-U.S. FTA, Chapter Nine.

Appendix (6.10): An analysis of some of the main provisions of the General Agreement on Trade in Services (GATS)

1. Scope and non-discriminatory treatment

The GATS applies to measures that affect trade in services. Article 1 defines four modes of supply of trade in services; i.e. trade in services can be carried out in four ways depending on the territorial presence of the supplier and consumer at the time of the transition. Mode one is "cross-border trade", which covers the services supplied from one member into the territory of another member such as international telephone calls. Mode two is "consumption abroad", where services in the territory of one member are supplied to the services consumer of any other member, such as the case of tourism and calling card services. Mode three is "commercial presence", where a service supplier of one member provides its service through commercial presence in the territory of any other member such as a foreign mobile company setting operations in Oman. Mode four is called "presence of natural persons" where individuals travel from their own country to supply services in another country such as foreign experts and advisors in telecoms coming to Oman to provide some professional views to Omantel about how to increase its efficiency in light of the liberalisation of the sector.

According to Article II.1 of the GATS, any MFN treatment accorded by one member to another country, whether a member or not, in respect of any GATS measure must be accorded to all other members. However, members, at the time of entry into force of the Agreement or date of accession, are allowed to adopt certain measures that can be inconsistent with the principle of the MFN treatment. These measures must be listed in a "schedule of exemption" which constitutes an integral part of the Agreement (Article II.2). This exception reflects the flexibility aspect of the GTAS. When the GATS came into force, a number of countries already had preferential trading partners and felt it was vital to maintain these preferences temporarily. Hence, it was agreed that if a member had recorded an exemption in a particular sector from the MFN treatment, it could grant more favourable treatment to some members without according it to other members in terms of the exemption which it had recorded.

The conditions for such deviations are outlined in an Annex to the Agreement called the "Annex on Article II Exemptions". The Annex provides that the exempted measures from

the MFN obligations are reached through consultations with other interested members. A member could only take an advantage of such exemptions at the time of entry into force of the GATS when the exemptions were recorded in its schedule. The Council for Trade in Services was to review these exemptions within five years of 1 January 1995 and decided whether they should be continued or not. The exemption of a member from its MFN obligations with respect to a particular measure terminates on the date provided for the exemption as stated in its schedule of exemption. However, by no means should each exemption exceed a period of 10 years. When the exemption period is terminated, the member is required to notify the Council for trade in Services about the termination and the conformity of the measure with the MFN obligation. It is worth-noting that Oman has not made any specific MFN exemptions at the time of joining the WTO. However, if Oman feels that it is necessary for its economic interests to seek such exemptions, Oman could still do so by following the process of a waiver under the WTO Agreement. A request for such a waiver will have to be made to the Council for Trade in Services, which will consider it and send a report to the Ministerial Conference within 90 days for a decision which can be taken if three-fourths of the members agree (see chapter one). The waiver will state the exceptional circumstances in which it has been allowed and the date of its termination. These flexibilities do not exist in the FTA.

2. Transparency and domestic regulations

Under Article III of the GATS, Oman -- as any other member -- is required to publish all measures relevant to the application of the Agreement and which may affect its operation, including international agreements (Article III.1). Also, any changes in the domestic laws, regulations, and administrative guidelines that may have an impact on trade in services sectors that are made subject to specific commitments must be informed to the Council for Trade in Services (Article III.3). Moreover, every member is also required to establish an enquiry point to respond to requests from other members. Such enquiry points must be established within two years of the entry into force of the WTO Agreement. The Council may allow flexibility to developing countries over this time frame (Article III). As for Oman, the Directorate General of Organizations in the Ministry of Commerce and Industry is the relevant Government body responsible for dealing with WTO issues and responding to any enquiries in regard to Oman's membership to the WTO (MOCI, 2008). Article IIIbis provides that members are not required to provide confidential information, the disclosure of which might restrict law enforcement or work against the public interest,

or would prejudice legitimate commercial interests of particular enterprises, public or private.

Article VI stipulates particular disciplines for domestic regulations that should be adopted by each member in order to implement the obligations of the GATS. Firstly, each member must ensure that all measures that affect trade in services are *administered in a reasonable, objective and impartial manner* (Article VI.1). Secondly, each member is required to *adopt judicial, arbitral or administrative tribunals or procedure which provide, at the request of an affected service supplier*, for the prompt review of administrative decisions affecting trade in services and the appropriate remedies for that. Each member must ensure that the review procedures are conducted objectively and impartially (Article VI.2.a). Thirdly, where an application is made to any member for authorisation of supplying a listed service in the member's schedule of specific commitments, the member must inform the applicant about its decision within a *reasonable period of time*. This is to ensure that unnecessary delays in this regard should not act as a barrier to the supply of services. Also, if the applicant requests information concerning the status of its application, the member to whom the application is made is obliged to provide such information *without undue delay* (Article VI.3).

Fourthly, the GATS assigned the Council for Trade in Services to promote general disciplines for qualification requirements that each service suppliers must entertain, technical standards of the service, and licensing criteria required for supplying the service in a member country, provided that these *requirements do not constitute unnecessary barriers to trade in services* (Article VI.4). For the purpose of fulfilling its standards or criteria for the authorisations, licensing, or certification of service suppliers, a member may recognise; the education or experience obtained in another country, or the requirements, licenses, or certifications granted in another country. Any member can base it recognition of these standards upon an agreement or arrangement with the country concerned or the member may accord its recognition autonomously (Article VII.1). However, such recognition must not be conducted in a manner which would constitute a means of discrimination between countries *in the application of its standards or criteria for the authorization, licensing or certification of services suppliers, or a disguised*

restriction on trade in services (Article VII.3)[1] Each member must notify the Council for Trade in Service about its existing recognition measures and about any negotiation for harmonisation so that any other interested members may join such negotiations. Any new recognition measures and substantial modifications to existing measures must also be promptly notified to the Council (Article VII.4).

3. Other flexible measures

The GATS permits the existence of monopolies or exclusive suppliers of services but impose two main conditions. Firstly, a member must ensure that any monopoly supplier of a service in its territory does not act in a manner inconsistent with the obligations of the member regarding MFN treatment and its specific commitments (Article VIII.1). Secondly, when such a supplier competes for the supply of a service beyond its scope of monopoly's rights and yet in a sector covered by the obligations of the member, the member has to ensure that the supplier does not abuse its monopoly position to act in a manner inconsistent with the specific commitments of the member (Article VIII.2). Article VIII.4 requires members to report the formation of new monopolies to the Council of Trade in Services if the relevant sector is subject to specific commitments. All these measures are absent from the FTA.

Furthermore, in cases of serious balance-of-payments (BOP) or external financial difficulties, Oman, as the rest of other members, can adopt or maintain restrictions on trade in services on which it has undertaken specific commitments (Article XII). Oman can also adopt and maintain restrictions on payments or transfers for transactions related to such commitments. However, such measures have to be non-discriminatory between members and must not exceed the extent necessary to deal with BOP difficulties. These measures should also be temporary and must be phased out progressively as the BOP situation improves. In addition, while adopting BOP measures, a member must avoid unnecessary damage to the commercial, economic and financial interests of any other member. Any restrictions applied must be promptly notified to the General Council. In addition, Oman may, as per Article XIV, take measures that are necessary to protect public morals and order, and protect life and health of human, animal or plant. Oman may also take measures necessary to secure compliance with laws relating to prevention of

[1] Similar measures are provided under Article 11.9 of the FTA.

deceptive and fraudulent practices or dealing with the effects of a default on services contracts, and to protection of the privacy of individuals and their safety. Oman may also take measures necessary for protecting security interests or meeting the obligations under the United Nations Charter for the maintenance of international peace and security.

Also, Article XIII provides that the GATS obligations of MFN treatment, specific market access, and national treatment, shall not apply to laws, regulations or requirements governing procurement by government agencies for governmental purposes.[2] However, this exception does not extend to government procurement for commercial resale or for use in the supply of services for commercial sale. Moreover, Article X allows members to take safeguard measures in respect of any service sector. If the member finds out that it is necessary to withdraw or modify any specific commitment within three years of the coming into force of this commitment, it may notify the Council for Trade in Services about its intention to do so. But, there are two conditions that must be considered before the safeguard action is taken. The first is that any safeguard measure can only be taken after a period of one year from the date on which the commitment enters into force. Secondly, the member has to demonstrate to the Council that the modification or withdrawal of the commitment cannot await the lapse of the three-year period which is the period allowed for the modification of schedules as per Article XXI.

[2] See the comparative analysis on government procurement in Chapter Six of the thesis.

Appendix (6.11): Oman's horizontal commitments as included in Oman's Schedule of Specific Commitments on Services

Mode of supply: 1) cross-border supply, 2) consumption abroad, 3) commercial presence 4) presence of natural persons			
Sector/ sub-sector	Limitation on market access	Limitation on national treatment	Additional commitment
Horizontal commitment: All sectors and sub-sectors included in this schedule	The conditions of ownership, management, operation, juridical form and scope of activities as set out in a license or other form of approval establishing or authorising the operation or supply of services by an existing foreign service supplier, will not be made more restrictive than they exist as of the date of Oman's accession to the WTO. 3)[1] Commercial presence in the form of a company incorporated in Oman, with foreign equity limited to: (i) 49% (ii) Starting from the effective date of relevant legislation, but not later than 1 January 2001, 70%. Commercial presence allowed for representatives offices, as from 1 January 2001. Commercial presence for foreign service companies subject to minimum capital of OR 150,000 until 31 December 2000. No such requirement as from 1 January 2001. 4)[2] Unbound except for measures concerning entry and temporary stay of natural persons who fall into one of the following categories: **(i) Business visitors** Persons not based in Oman, who visit Oman on behalf of a service supplier for business negotiations (and not for direct sale of services) or for doing preparatory work for establishing commercial presence in Oman. Entry for persons in this category shall be for a period of 90 days.	3) Purchase of land and real estate is not permitted to foreign companies and foreign individuals. However, service suppliers will have the right to 50 year renewable leases for land and buildings necessary	

[1] Number 3 refers to the third mode of supply; i.e. commercial presence on which certain limitations are imposed. If the term "unbound" is mentioned in front of a mode number, it means that the member has taken no commitment in respect of that mode in that particular sector or that particular mode of supply is not technically possible in that sector. Hence, the member is free to impose any restrictions on market access in respect of that mode in that sector. The opposite applies to the term "none", which means that the member commits that it will not put any limitation on market access relating to the mode in the particular sector.

[2] Number 4 refers to the fourth mode of supply; presence of natural persons.

	Persons who are employees of an enterprise outside Oman, not having commercial presence in Oman, which has concluded a services contract with an enterprise engaged in substantive business in Oman and who provide a service in Oman as professionals on behalf of enterprises outside Oman. Entry and stay of persons in this category shall be for a period of 90 days. **(ii) Employees of juridical persons** Limited to 20% of the total number of personnel of a service supplier. The entry of such natural person shall be for a period of two years with a maximum of four years. **Definitions of intra-corporate transferees** Managers, executive and specialists who are employees of firms that provide services within Oman through a branch, subsidiary of affiliate established in Oman and who have been in the prior employ of their firm outside Oman. **Managers** Persons within an organization who primarily direct the organization or a department or sub division of the organization, supervise and control the work of other supervisory, professional or managerial employees, have the authority to hire or fire or recommend hiring, firing, or other personnel actions (such as promotion or leave authorization), and exercise discretionary authority over day-to-day operations. Does not include first-line supervisors unless the employees supervised are professionals nor does it include employees who primarily perform tasks necessary for the provision of the service. **Executives:** Persons within an organization who primarily direct the management of the organization, exercise wide latitude in decision making, and receive only general supervision or direction from higher-level executives, the board of directors or stockholders of the business. Executives would not directly perform tasks related to the actual provision of service or services of the organization. **Specialists** Persons within an organization who possesses knowledge at an advanced level of continued expertise and who possesses proprietary knowledge of the organization's services, research, equipment, techniques or management.	to engage in service activities. Companies with foreign equity up to 70% will pay income tax at the same rates as wholly owned Omani companies. However, companies with foreign equity exceeding 70% may be required to pay a higher rate of income tax as compared with wholly Omani owned companies. 4) Unbound except for measures concerning the categories of natural persons referred to in the market access column.	

Source: WTO (200b). Oman Schedule of Specific Commitments: GATS.

Appendix (6.12): Oman's telecommunications specific commitments as is included in Oman's Schedule of Specific Commitments on Services

Mode of supply: 1) cross-border supply, 2) consumption abroad, 3) commercial presence 4) presence of natural persons			
Sector/ sub-sector	Limitation on market access	Limitation on national treatment	Additional commitment
Telecommunication services: a) Voice telephone services	1) Starting no later than 1 January 2004; none 2) None 3) Until 31 December 2003, GTO [OMANTEL] will have exclusive right to provide services. Starting no later than 1 January 2004, none; Starting no later than 1 January 2005, commercial presence in the form of wholly foreign-owned subsidiaries permitted. 4) Unbound, except as in the horizontal section	1) None 2) None 3) None 4) Unbound, except as in the horizontal section	Oman adopts the additional commitments listed in the Reference Paper attached.
b) Packet switched data transmission services c) Circuit switched data transmission services	1) Starting no later than 1 January 2004; none 2) None 3) Until 31 December 2003, GTO [OMANTEL] will have exclusive right to provide services. Starting no later than 1 January 2004, none; Starting no later than 1 January 2005, commercial presence in the form of wholly foreign-owned subsidiaries permitted. 4) Unbound, except as in the horizontal section	1) None 2) None 3) None 4) Unbound, except as in the horizontal section	
d) Telex services e) Telegraph services	1) Starting no later than 1 January 2003; none 2) None 3) Until 31 December 2002, GTO [OMANTEL] will have exclusive right to provide services. Starting no later than 1 January 2003, none; Starting no later than 1 January 2005, commercial presence in the form of wholly foreign-owned subsidiaries permitted. 4) Unbound, except as in the horizontal section	1) None 2) None 3) None 4) Unbound, except as in the horizontal section	
f) Facsimile services (the provision of facsimile equipment	1) Starting no later than 1 January 2004; none 2) None	1) None 2) None	

that has already been liberalised and GTO [OMANTEL] does not provide the equipment)	3) Until 31 December 2003, GTO [OMANTEL] will have exclusive right to provide services. Starting no later than 1 January 2004, none; Starting no later than 1 January 2005, commercial presence in the form of wholly foreign-owned subsidiaries permitted. 4) Unbound, except as in the horizontal section	3) None 4) Unbound, except as in the horizontal section	
Mobile/Cellular Services Analogue/ digital services PCS (Personal Comm. Services) Paging Services Mobile Data Services	1) Starting no later than 1 January 2003; none 2) None 3) Until 31 December 2002, GTO [OMANTEL] will have exclusive right to provide services. Starting no later than 1 January 2003, none; Starting no later than 1 January 2005, commercial presence in the form of wholly foreign-owned subsidiaries permitted. 4) Unbound, except as in the horizontal section	1) None 2) None 3) None 4) Unbound, except as in the horizontal section	
Payphone & calling card services	1) Starting no later than 1 January 2001, for payphones services, none; starting no later than 1 January 2002, for calling card operations, none. 2) None 3) Until 31 December 2000, GTO [OMANTEL] will have exclusive right to provide payphone services. None as of 1 January 2001; starting no later than 1 January 2003, commercial presence in the form of wholly foreign-owned subsidiaries permitted. Until 31 December 2001, GTO [OMANTEL] will have exclusive right to provide calling card operation services. For calling card operation services none as of 1 January 2002. Starting no later than 1 January 2003, commercial presence in the form of wholly foreign-owned subsidiaries permitted. 4) Unbound, except as in the horizontal section.	1) None 2) None 3) None 4) Unbound, except as in the horizontal section	
g) Private leased circuit services Data services Internet services	1) Starting no later than 1 January 2003; none 2) None 3) Until 31 December 2002, GTO [OMANTEL] will have exclusive right to provide services. Starting no later than 1 January 2003, none;	1) None 2) None 3) None	

	Starting no later than 1 January 2005, commercial presence in the form of wholly foreign-owned subsidiaries permitted. 4) Unbound, except as in the horizontal section	4) Unbound, except as in the horizontal section	
h) Electronic mail i) Voice mail j) On-line information and data base retrieval k) Electronic data interchange l) Enhanced/value added facsimile services (incl. Store and forward, store and retrieve). m) Code and protocol conversion n) On-line information and/or data processing, including transaction processing	1) Starting no later than 1 January 2001; none 2) None 3) Until 31 December 2000, GTO [OMANTEL] will have exclusive right to provide services. Starting no later than 1 January 2001, none; Starting no later than 1 January 2005, commercial presence in the form of wholly foreign-owned subsidiaries permitted. 4) Unbound, except as in the horizontal section	1) None 2) None 3) None 4) Unbound, except as in the horizontal section	
<u>Audiovisual services</u> a) Motion picture and videotape distribution services	1) None 2) None 3) Foreign equity limited to 49% 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as in the horizontal section	
b) Cinema ownership & operation	1) None 2) None 3) Foreign equity limited to 51% 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) None 4) Unbound, except as in the horizontal section	

Source: WTO (2000b). Oman Schedule of Specific Commitments: GATS.

Appendix 6.13: Comparative analysis between chapter 13 of the FTA and WTO arrangements on telecom sector
Category one: Similar commitments but stricter and more detailed under the FTA

Topic	Main content, differences, and remarks
Access to and use of public telecom services (PTS) **FTA provision:** Article 13.2 Chapter 13 **WTO provision:** Paragraph 5 of the Annex on Telecommunications (AT) to the GATS	- Both provisions oblige members/parties to permit services suppliers of other members/parties to access and use PTS on reasonable and non-discriminatory terms and conditions. The two provisions emphasise that services suppliers shall be permitted to the followings: 1) to purchase or lease, and attach terminal or other equipment which interfaces with the public network; 2) to interconnect private leased or owned circuits with PTS or with circuits leased or owned by another supplier; 3) to use operating protocols of their choice in the supply of any service; 4) to use PTS for the movement of information within the territory of the party and across borders and for access to information contained in databases or stored in machine-readable form in the territory of either party. - However, parties, under both articles, are permitted to take exceptional necessary measures to ensure the security and confidentiality of messages, provided that these measures are not applied in an arbitrary and discriminatory manner or would constitute a disguised restriction on trade in services. **Notes:** - Despite their similarities, there are some important differences in the details of the two provisions. The FTA applies stronger and additional conditions on Oman to further open up its telecom services, which make the FTA arrangements less flexible and more obligatory on Oman than those under the WTO. Firstly, paragraph 5.a of the AT limits all obligations about access to and use of PTS to services that are strictly included in Oman's Schedule of Specific Commitments. These services were selected on a positive list basis, which means that any non-included services will not be subject to the multilateral obligations outlined in the AT, GATS, or the RP. But, under chapter 13 of the FTA every single type of telecom services; either basic or value added, shall be subject to the obligations of the chapter, unless, based on negative list approach, specifically excluded. Secondly, the actual wordings of the two provisions further support the above view. Article 13.2.1 of the FTA sates that; *[e]ach Party shall ensure that service suppliers of the other Party have access to and use of any public telecommunications services, including leased circuits, offered in its territory or across its borders*. Hence, the expression *access to and use of any* clearly implies that every single type of public telecom services is subject to the rulings of chapter 13 unless otherwise stated in one of the annexes to chapters 10, 11, and 13 of the FTA. But, paragraph 5.a of the AT states that: *[e]ach Member shall ensure that any service supplier of any other Member is*

	accorded access to and use of public telecommunications transport networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its Schedule. It is clear then that only those services listed in a member's Schedule are subject to the AT, GATTS, and RP. Thirdly, under the WTO, Oman, as per para.5.e of the AT, does not have to be fully committed to the above-mentioned obligations and, unlike the FTA, can apply exceptional conditions in order to achieve the following objectives; 1) to guarantee that the responsibilities of suppliers to provide public telecom transport networks and services are safeguarded; 2) to protect the technical integrity of public telecom transport networks or services; 3) and to ensure that telecom service suppliers of any other member do not supply services unless they are authorised to do so on the basis of the commitments in the member's schedule. In order to achieve the above-mentioned objectives Oman, as per para 5.f of the AT, can apply one of the following restrictive "safeguard measures" against telecom suppliers of other WTO members. However, Oman's ability to apply these flexible measures is very much restricted under the FTA. 1) restrictions on resale or shared use of such services; 2) a requirement to use specified technical interfaces, including interface protocols, for inter-connection with public telecom transport networks and services; 3) specific conditions for inter-operability of such services; 4) requirement on the type of approval for terminal or other equipment which interfaces with the network and technical requirements relating to the attachment of such equipment to such network; 5) restrictions on inter-connection of private leased or owned circuits with the public telecom transport networks or services or with circuits leased or owned by another service supplier; and 6) conditions on notification, registration, and licensing. Fifthly, according to para.5.g of the AT, a developing country could apply *reasonable conditions on access to and use of public telecommunications transport networks and services* if it considers that these conditions are essential for strengthening its domestic telecom infrastructure and service capacity and would lead to consolidate its participation in international trade of telecom services. These conditions must be specified in the member's schedule. This provision further demonstrates that the multilateral arrangements are more flexible than the FTA. - However, by committing itself to the full liberalisation of telecom services, Oman does not seem to have taken an advantage of this provision. This is attributed to the big negotiating pressures from developed countries that negotiated Oman's accession to the WTO (MOCI and MNE, Mutual Memorandum on Oman and the WTO, 2001). Finally, Oman is obliged, as per requirement of Article 13.2.d of the FTA, to permit U.S. telecom suppliers to perform

	switching, signaling, processing, and conversion functions. However, under the GATS, AT, and RP, no such obligations exist.
Interconnections **FTA provision:** Articles 13.3.1 and 13.4.5 of chapter 13 **WTO provision:** Paragraph 2 of the Reference Paper	- Under both provisions, Oman is obliged to ensure that its major supplier, Omantel, enables other telecom suppliers to interconnect with its network. Such interconnections must be guaranteed under non-discriminatory terms and conditions, and rates. - Interconnections with other suppliers must also be ensured in a timely basis, at chosen network termination points, and reasonable and transparent cost rates. - Interconnections must be "sufficiently unbundled" which means that suppliers do not have to pay for network components or facilities that they do not require for the service to be provided. - Also, both provisions require that the procedures applicable for interconnection to a major supplier along with its interconnection agreements or reference interconnection offer to be made publicly available. **Note**: Similar provisions are applied to interconnections under the two trading systems.
Provisions of leased circuits services **FTA provision:** Article 13.4.6.a **WTO provision:** Paragraphs 5.b and 5.f of the Annex on Telecommunications	- Leased circuits services are telecom facilities between two or more designated points that are granted to a particular service supplier (Article 13.17, the FTA). - Private leased circuits are where a point-to-point private line used by one organisation to communicate between its offices that are geographically scattered in different parts of the world. Private leased circuits can be used for video conferencing, business data exchange and internet access. Thus, it is a service that is dedicated for the particular function of the organisation, and through which high level of security and privacy in the communications can be guaranteed (Searchnetworking.com, 2008). Article 13.4.6.a of the FTA obliges each party to ensure that *a major supplier in its territory provides service suppliers of the other Party leased circuits services that are public telecommunications services on terms and conditions, and at rates, that are reasonable and non-discriminatory.* A similar obligation is made under paragraph 5.b of the Annex on Telecommunications which states that *ach Member shall ensure that service suppliers of any other Member have access to and use of any public telecommunications transport network or service offered within or across the border of that Member, including private leased circuits.* **Note:** Although the two provisions make similar obligations for members/parties to provide leased circuits services, WTO provisions are more flexible for Oman than the FTA. This is because under the WTO this obligation only applies to two types of services that are specifically listed, on the positive list basis, in Oman's Schedule of Commitments; namely data and internet services (see Appendix..). Hence, any types of other leased circuits services are not subject to

	this obligation. But, under the FTA, all types of services that fall under leased circuits are subject to liberalisation. Oman has not made any exception related to this area in any of its Annexes to the FTA.
Interconnections of leased circuits **FTA provision** Article 13.2.2.c of chapter 13 **WTO provision** Paragraph 5.b.ii of the Annex on Telecommunications	- Paragraph 5.b.ii of the Annex on Telecommunications obliges members to *ensure ...that suppliers are permitted ...to interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier.* Article 13.2.2.c of the FTA obliges each party to ensure that *service suppliers of the other Party are permitted to...connect owned or leased circuits with public telecommunications networks and services in the territory, or across the borders, of that Party or with circuits leased or owned by another person.* **Note**: - Although the two provisions make similar obligations for members/parties to interconnect leased circuits with public telecom networks or other leased or owned circuits, WTO provisions are more flexible for Oman than the FTA for two main reasons. Firstly, Article 5.f of the AT permits members to impose conditions for access to and use of public transport networks and services. Among these conditions are restrictions on inter-connection of private leased or owned circuits with public telecom network or services or with circuits leased or owned by another service supplier (para 5.f.5, AT). However, these conditions can only be imposed to achieve three objectives that are stipulated in Article 5.e, (see the above-mentioned analysis on access to and use of PTS). However, as the FTA does not contain similar exceptional measures, Oman may not be able to restrict U.S. leased circuits services suppliers from being interconnected with Omantel's public telecom network even if the latter's responsibilities to make its services available to the public or its technical integrity are at risk. Secondly, as is already explained above, this obligation only applies, in the case of Oman, to the leased circuits services of data and internet that are specifically mentioned in Oman's Schedule of Commitments. But, under the FTA, all types of services that fall under leased circuits are subject to this interconnection obligation.
Anti-competitive safeguards **FTA provision:** Article 13.4.2 of chapter 13 **WTO provision:**	- According to both provisions, Oman is prohibited from engaging in anti-competitive practices and must adopt appropriate measures to prevent its major supplier, Omantel, from engaging in such practices including: a) engaging in anti-competitive corss-subsidisation with another major supplier, which can be, for instance, NAWRAS, b) using information obtained from competitors with anti-competitive results, and c) not providing other suppliers with necessary technical and commercial information at the right time. - Preventing these anti-competitive practices aims at ensuring that members' market access commitment is not impaired by the domination of major suppliers on basic telecom services (see Luff, 2004).

Paragraph 11 of the Reference Paper	**Note**: -While chapter 13 of the FTA prohibits anti-competitive practices, it does not entail, on the other hand, protective measures that are necessary to be taken in cases of difficult conditions as is provided in paragraphs 5.e and 5.f of the AT of the WTO (see the analysis provided above on "access to and use of public telecommunications services" and "interconnections"). - Hence, while Oman is required, under the FTA, to prevent anti-competitive practices, it is not permitted to adopt some exceptional safeguard measures to ensure the integrity of its telecommunications sector; measures that are allowed to be taken under the WTO.
Unbundling of network elements **FTA provision:** Articles 13.4.4 and 13.4.5.iv **WTO provision:** Paragraph 2.2.b of the Reference Paper	- According to both provisions, Oman must guarantee that interconnections for the facilities and equipment of telecom suppliers with public telecommunications services are "sufficiently unbundled". - This means that telecom suppliers, including those of the U.S., will only have to pay for the particular components or facilities they use in Omantel public telecom network for their business. - Hence, telecom suppliers will not make real substantial and tangible investments in establishing networks in Oman. They will have the advantage of utilising the services of a network that they have not participated in its constructions.
Independent regulatory body **FTA provision:** Article 13.7 **WTO provision:** Paragraph 5 of the Reference Paper	- Both the FTA and the WTO require the establishment of a regulatory body that must be independent and not accountable to any supplier of telecom services. - Regulators' decisions and procedures must be impartial with respect to all market participants. - As a result, Oman has established the Telecommunications Regulatory Authority (TRA) in 2002 to regulate the telecom sector in Oman. - According to Article 7 of the Telecommunications Regulatory Act published by the Royal Decree Number 30/2002, the TRA seeks to achieve different objectives such as: 1) to ensure the provision of telecom service in all parts of Oman within reasonable limits and charges, 2) to encourage the use of telecom services with the aim to access world markets and information, 3) to safeguard the interests of beneficiaries and dealers in respect of the prices of equipment and the rates and quality, and efficiency of the telecom services provided, 4) to ascertain the financial suitability of the licenses, 5) to develop the efficiency and economy in the performance of the licensees engaged in the commercial activities connected to telecommunications. **Note:** - The FTA puts stronger emphasis on the independence and neutrality of the regulatory body. For instance, Article

	13.7.1 obliges the Gov of Oman to ensure that the TRA does not have any financial interest or maintain any operating role in any telecom services suppliers in Oman. - If the Gov. of Oman itself holds any financial interests in any telecommunications services suppliers as is the case with Omantel where the Gov owns 70 percent, the Gov must ensure that such interests do not influence the decisions and procedures of the TRA (Article 13.7.2).
Licensing progress **FTA provision:** Article 13.9 **WTO provision:** Paragraph 4 of the Reference Paper	- Under both provisions, Oman is obliged, through the TRA, to publish all the licensing criteria and procedures it requires to be fulfilled by any supplier of public telecom services. - Similarly, the period required for reaching a decision concerning an application for a license and the terms and conditions for all types of licenses must all be made publicly available. - In cases of denial of licenses, the TRA must provide an explanation for the reasons behind its decisions if any of the applicants requested. **Note:** - There are no differences between the two provisions. - It is useful to note that the TRA has divided its licensing policy for public telecom services to three classes: - Class I licenses. These are issued for the provision of basic public telecom services by a Royal Decree based on the approval of the TRA and the recommendation of the Minister of Transport and Communications. The duration of the license is determined by the Decree. - Class II licenses. These are issued for the provision of additional public telecom services such as internet access and audio services by a Ministerial decision after the approval of the TRA for a duration that should not exceed five years. - Class III licenses. These are issued for the provision of private telecom services which do not have access to the public network. Licenses of this class are issued by the decision of the TRA to private network owners/ services' providers who meet qualifying criteria set by the TRA for duration of no more than five years.
Allocation and use of scarce resources **FTA provision:** Article 13.10 **WTO provision:** Paragraph 6 of the Reference Paper	- According to both provisions, Oman must ensure that any procedures implemented for the allocation and use of scarce resources, including frequencies and number and rights of way, are carried out in an objective, timely, transparent, and non-discriminatory manner. - Oman must make the current state of allocated frequency bands available to the public. But, Oman does not have to provide detailed identification of frequencies allocated for specific government uses. **Note:** - Article 13.10.3 of the FTA further clarifies that each party retains the right to establish and apply spectrum and frequency management policies including the ability to allocate frequency bands, taking into account current and future needs and spectrum availability. Such policies can be carried out even if they may result in limiting the number of suppliers of public telecom services provided they are conducted in a consistent manner to the provisions of the FTA (Article 13.10.3).

	- This clarification is not found in the WTO. - The TRA clearly states that it has the authority to limit the number of telecom and radio licenses issued for a specific class of telecom systems or services, so that the following objectives can be achieved: a) to ensure the efficient management and use of frequency spectrum, b) to specify a particular period to ensure that sufficient telecom numbers are available for the use in the numbering plan. c) to ensure that the requirements of public interests are met.
Dispute settlement **FTA provision:** Article 13.12 **WTO provision:** Paragraph 2.5 of the Reference Paper	- According to Article 13.12 of the FTA, Oman must authorise enterprises and suppliers to resort to the TRA to resolve their disputes. - Disputes can be raised over any matter related to Article 13.2 through 13.5 of the FTA, as well as over the terms, conditions, and rates for interconnection with major suppliers. - Article 13.12 of the FTA allows enterprises to challenge the decisions of the TRA. - If, for instance, a U.S enterprise feels unsatisfied, or its interests have been negatively affected, as a result of the decision of the TRA, it may petition the TRA to consider its decision. - Alternatively, the U.S. enterprise may obtain a review of determination or decision by another impartial and independent judicial authority in Oman. - This latter alternative provides U.S. enterprises with the authority to overcome the TRA decisions by taking the dispute to another judicial body, whose decision is more supreme and final. **Note:** - Paragraph 2.5 of the Reference Paper allows service suppliers which request interconnection with a major supplier to raise any dispute to an independent regulatory body regarding "appropriate terms, conditions, and rates for interconnection within a reasonable period of time". - But, unlike in the FTA, there are no other provisions that allow suppliers to challenge the decisions of the independent body. - If a supplier feels unsatisfied with the decision of the regulatory body, it can raise their concern to their government which can then pursue the dispute through the dispute settlement procedures of the WTO.
Transparency **FTA provision:** Article 13.13 **WTO provision:** Paragraph 4 of the Reference Paper	- Both provisions require parties to make conditions about access to and use of public telecom networks and services publicly available. - Published details must include tariffs measures, specifications of technical interfaces with the public networks and services, information on bodies responsible for the preparation and adoption of standards affecting access and use of the network and services, conditions on the attachment of terminal or other equipment, and any other details on notifications, registration or licensing requirements. **Note:** - The FTA provides additional requirements than the WTO. For instance, Oman as per requirement of Article 13.13.a

	of the FTA, is obliged to promptly publish and make available to all interested person all the rulemakings of the TRA, as well as the basis on which the rules are made. - Even more importantly, Oman must provide any U.S. interested persons with an advance public notice about any proposed rulemaking that the TRA intends to adopt and allow them with the opportunity to comment on the proposal. - These are very strict provisions that would enable U.S. suppliers to interfere in the process of rulemaking of telecom sector in Oman. - These obligations do not exist in the WTO.
Cross-border trade in services **FTA provision"** Chapter 11 **WTO provision:** The GATS, AT, and RP	Many of the provisions of chapter 11 of the FTA applies to telecommunications sector such as: national treatment (Article 11.2), most-favoured-nation treatment (Article 11.3), market access (Article 11.4), and local presence (Article 11.5). **Note**: - Under the GATS, the obligations of national treatment, most-favoured nation treatment and market access, only apply to the specific commitments that Oman has made in its Schedule. - But, under the FTA, these obligations apply to all types of telecommunications except where it is clearly mentioned in special annexes. - Under the GATS, there are many different flexible measures that Oman can benefit from, such as in cases of difficulties related to balance of payment, or undertaking exceptional measures in relation to health, safety, and collection of taxes, or adopting safeguard measures and subsidies. - However, all these flexible measures do not exist in chapter 11 or chapter 13 of the FTA. - Oman can also benefit from the technical assistance provided by the WTO secretariats, but no such benefit is provided for Oman under the FTA.
Local presence **FTA provision:** Article 11.5 of chapter 11 **WTO provision:** Oman's Schedule of commitments on services	According to Article 11.5 of the FTA, Oman does not have the right to require U.S. services suppliers, including telecom, to establish or maintain a representative office or any form of enterprise, or to be resident, in Oman. **Note:** - This provision does not work for the benefit of Oman, as it allows U.S. telecom suppliers to supply their services in Oman without establishing any office or enterprises. - Fortunately, however, Oman has made important exception to this obligation in Annex II of the FTA, where it is stated that: Oman reserves the right to adopt or maintain any measure that requires telecommunications suppliers to 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.

Source: Compiled by the author from (Oman-U.S. FTA: Chapters 11 and 13; WTO: The GATS, Annex on Telecommunications, Reference Paper, and Oman's Schedule of Specific Commitments on Services).

Appendix 6.14: Comparative analysis between chapter 13 of the FTA and WTO arrangements on telecom sector
Category two: additional WTO plus commitments under the FTA

Topic	Main content, differences, and important remarks
Resale of telecommunications services **FTA provision:** Articles 13.3.2 and 13.4.3	- Resale refers to telecom services purchased from another carrier. Thus, a resale carrier is a carrier that does not own transmission facilities but obtain communications services from another carrier for resale to the public. - Under Article 13.4.3 of the FTA, Oman must ensure that its major supplier, Omantel, offers public telecom services, which it provides at retail to end-users, for resale at reasonable rates to U.S. suppliers. - Articles 13.4.3.b and 13.3.2 further oblige Oman to ensure that suppliers of telecom services do not impose any *unreasonable or discriminatory conditions or limitations on the resale of those services.* **Note:** - Resale provisions do not exist under the WTO; and thus Oman is not obliged to abide by them at the multilateral level. - But, under the FTA, Omantel must provide public telecom services for resale to U.S. suppliers at reasonable rates. - Resale commitment applies to all types of public telecom services in Oman, with the exceptions of only telecom supplies to "rural areas" and commercial mobile services. - These two exceptions, as well as many other exceptions, also apply to the U.S. - More analysis on these exceptions is provided at the end of this table.
Number portability **FTA provision:** Article 13.3.3	- Number portability refers to the ability of end-users[1] of public telecom services to maintain their same telephone numbers, at the same location, when switching between the same category of suppliers of public telecomm services, without affecting quality, reliability, or convenience (Article 13.17). - According to Article 13.3.3 of the FTA, Oman must ensure that suppliers of public telecom services, Omantel, Oman Mobile, and NAWRAS, provide the service of number portability *to the extent feasible, and on reasonable terms and conditions.* **Note:** - There is no requirement on the issue of "number portability" in the WTO. Thus, Oman is not obliged to abide by it at the multilateral level.
Dialing parity **FTA provision:**	- Digital parity means the ability of an end-user to use an equal number of digits to access a particular public telecom services, irrespective of suppliers the end-user selects (Article 13.17, FTA). In other words, equal dialing access is provided to consumers without any additional codes or numbers required to access a different telecom service provider.

[1] Article 13.7 of the FTA defines an end-user as *a final consumer of or subscriber to a public telecommunications service, including a service supplier other than a supplier of public telecommunications services.*

Article 13.3.4	- According to Article 3.3.4, Oman must ensure that its public telecom services suppliers; Omantel and NAWRAS, provide dialing parity to U.S. suppliers of the same public telecommunications services and afford them non-discriminatory access to telephone numbers, directory assistance, directory listing, and operator services without any unreasonable delays. **Note:** - Digital parity is not required under the WTO. It is another WTO plus commitment.
Treatment by major suppliers **FTA provision:** Article 13.4.1	- According to Article 13.4.1 of the FTA, Oman must ensure that its major telecom supplier; Omantel, provides U.S. suppliers equal and non-discriminatory treatment to what Omantel accords to its subsidiaries, affiliates, or even non-affiliated service suppliers in regard to the availability, provisioning, rates, or quality of like public telecom services and the availability of technical interfaces necessary for interconnection. **Note:** - Paragraph 5 of the AT might seem to resemble Article 13.4.1 of the FTA as they both call for non-discrimination of suppliers of other members. However, there are substantial differences between the two provisions. - Firstly, para.5 of the AT does not prevent any major supplier from adopting favourable policy towards its own subsidiaries or affiliates. It only obliges each member to ensure that telecom services suppliers of other members are given the right to access and use public telecom networks and services on non-discriminatory terms and conditions, without any specific obligation on major suppliers themselves. - Secondly, the obligation of para.5 resembles Article 13.2, not Article 13.4.1 of the FTA. This makes the latter an additional WTO plus commitment. - Hence, under the FTA, Omantel is obliged to accord equal and non-discriminatory treatment to U.S. suppliers; similar to the treatment that Omantel accords to its affiliates such as Oman Mobile, Oman Fiber Optic , and Infoline company[2] or non-affiliate such as ANWRAS in regard of the availability, provisioning, rates, or quality of public telecommunications and the availability of technical interfaces necessary for interconnections. -Thus, ironically, Omantel will no longer be able to provide its own subsidiaries and affiliates more favourable treatment in regard to these aspects than what is accorded to U.S. suppliers. - This is a very strict commitment Omantel has to live up with under the FTA.
Co-location **FTA provision:**	- Oman must ensure that its major supplier, Omantel, provides U.S. telecom suppliers "*physical co-location*". This means that Omantel is obliged to provide an empty space from its own premises where U.S. suppliers can install, maintain, or repair their equipments used for interconnections.

[2] A) Oman Mobile is engaged in the establishment, operation, maintenance, and development of mobile telecommunications services. Omantel has 99% shareholding in Oman Mobile (Zawya, 2008).
B) Oman Fibre Optic (OFOC) is engaged in the manufacture and design of optical fibre and cables, which are mainly used for telecommunication services. OFOC sells its products locally and to international telecommunication operators. Omantel has 25.69% shareholding in the company (Zawya, 2008).
C) Infoline is engaged in the provision and management of call centre services. Omantel has 45% shareholding in this company (Zawya, 2008).

Article 13.4.7	- Omantel must provide physical co-location on terms and conditions and at cost-oriented rates that are reasonable, non-discriminatory, and transparent. - If it appears, that Omantel cannot provide co-location on its premises for U.S. suppliers either because of space limitations or for any other technical reasons, Omantel is still obliged to provide another alternative co-location or find an alternative solution. - Omantel must carry out these obligations on reasonable, transparent and non-discriminatory terms and conditions and at cost-oriented rates. **Note:** - "Co-location" is another WTO plus requirement under the FTA, and Oman must abide by it.
Access to poles, ducts, conduits, and rights-of-way **FTA provision:** Article 13.4.8	- Oman must ensure that its major supplier, Omantel, guarantee U.S. suppliers an access to its owned or controlled poles, ducts, conduits, and rights-of-way. - This obligation must be carried out on non-discriminatory and reasonable terms and conditions. - Oman must carry out this obligation although U.S. suppliers have not made any direct or tangible investment in the construction of telecom networks and facilities. **Note:** - No such commitment exists under the WTO. - Thus, under the WTO, Omantel can still restrict access to its poles, ducts, conduits, and rights-of-way, and oblige any foreign telecom suppliers to invest in the construction of these facilities. - It is this kind of restriction, where substantial investment in the telecom sector in Oman is needed. - However, such restriction cannot be imposed on U.S. suppliers, who will be able to compete in the Omani market utilising facilities they have not participated in their constructions. - Ironically, Omantel will have to live up with such competition.
Submarine cable systems **FTA provision:** Article 13.5	- Oman must ensure that any authorised entity in its territory to operate a submarine cable system as a public telecom service; i.e. Omantel, must permit U.S. suppliers to access this system on reasonable and non-discriminatory treatment. **Note:** This is another WTO plus commitment that Oman must abide by.
Conditions for the supply of value-added services **FTA provision:** Article 13.6.1	- Oman does not obtain the right to regulate or apply direct conditions on U.S. suppliers that provide value-added services in Oman through non-Omani facilities. - Oman cannot oblige U.S. value-added suppliers to: a) supply those services to the public generally, b) cost-justify their rates for those services, c) file a tariff for their value-added services, d) connect their networks with any particular customer for the supply of those services,

	e) conform with any particular standard or technical regulation for connecting to any other network, other than Oman's public telecom network. However, Article 13.6.1 provides that the above-mentioned actions can only be taken by Oman in the following circumstances; 1) if Oman finds that the practice of U.S. value added suppliers is anti-competitive, 2) if Oman seeks to promote competition, 3) if Oman seeks to safeguard the interests of consumers. **Note:** - Under the WTO, no such prevention is provided, which implies that Oman has the authority to control the value-added telecom services in the same way as basic telecom according to the rules of GATS, RP, and AT. - But, under the FTA, Oman cannot regulate or apply direct conditions on U.S. suppliers that provide value-added services in Oman through non-Omani facilities. - Although there are exceptional circumstances under which Oman can apply restrictions on U.S. value-added suppliers, these circumstances are still "exceptional". Thus, before taking them, Oman must demonstrate that one of these exceptional situations is taking place. - Perhaps one of the biggest concerns in restricting Oman's ability to control U.S. value-added services suppliers can be a cultural one. As being a Muslim country, Oman has adopted a very conservative strict approach to block internet sites that contradicts with Muslim ethics, such as sex interne sites, or movies that contain sexual sceneries. - Hence, the question is: will Oman still be able to restrict such movies or sites in the future? Under the above-mentioned exceptions, Oman might still be able to continue such restrictions on the basis that such actions are taken to "safeguard the interests of consumers". But, whether U.S. suppliers will respect and be satisfied with such actions or not, remains to be seen.
Government ownership **FTA provision:** Article 13.7	- The Gov of Oman is prohibited from according more favourable treatment to any telecom supplier, such as Omantel or Oman Mobile, than what is accorded to U.S. suppliers because it owns, fully or in part, that supplier (Article 13.7.3). - Even more importantly, the Gov of Oman is required to eliminate as soon possible its ownership in Omantel and Oman Mobile, and must inform the U.S. Gov about the time of its intention to do so. **Note:** - No such requirements exist under the WTO. - Both of these two FTA obligations are strict and entail great difficulties for Oman to abide by. This is because it is not enough that Oman guarantees U.S. suppliers non-discriminatory access and use of public network controlled by Omantel, but any favourable policy to Omantel made by the Gov of Oman can be seen as a breach of Article 13.7.3. - This is a very strict and difficult commitment. The Gov of Oman is the dominant owner of Omantel by 70% and four out of six board members are representatives of the Government.

	- Thus, decisions and policy making are determined by the Government which naturally seeks to improve the efficiency and competitiveness of the company in which it owns the major shareholding. - Thus, it is very natural that the Government decisions and policies will be more favourable to Omantel. - However, it should be the task of the TRA to conduct its regulatory actions on non-discriminatory basis, not the Government as a shareholder of Omantel. - Also, the obligation of eliminating the Gov ownership in Omantel and Oman Mobile is not only a WTO plus commitment, but it is a direct intervention in the economic policy making of the Government. - The way Article 13.7.4 is expressed makes this obligation a very strict and imperative one, as it states that *[e]ach Party shall maintain the absence of or eliminate as soon as feasible national government ownership in any supplier of public telecommunications services.* - Thus, the Government of Oman is put under pressure to sell out its shareholding in Omantel, as required by the FTA.
Enforcement **FTA provision:** Article 13.11	- Under the FTA, each party must ensure that its competent authority has the authority to enforce the party's measures relating to obligations outlined in Articles 13.2 through 13.5. - The enforcement measures must include: the ability of the competent authority to impose effective sanctions, such as *financial penalties ... or the modification, suspension, and revocation of licenses.* **Note:** - There is no similar provision under the WTO. Hence, it is left to each member to decide the kind of authority and enforcement measures accorded to its regulatory body. - But, under the FTA, Oman is obliged to do so and the enforcement measures must include imposing effective sanctions as stated in Article 13.11. - As a result, Oman must make the necessary changes to its domestic laws to accommodate these requirements. - Perhaps the TRA is the most suitable competent authority to enforce measures relating to obligations of Articles 13.2 through 13.5, because it is the regulatory body of the telecommunications sector in Oman. The TRA is already given the right, under section seven of the Telecommunications Regulatory Act, to take some legal actions against violations of the main regulations of the Act. - Thus, the FTA enforcement requirement of Article 13.11 can be incorporated in section seven of the TRA Act.
Choice of technology **FTA provision:** Article 13.14	According to Article 13.14, Oman will not be able to prevent U.S. suppliers of telecom services from selecting the type of technology they use to supply their services in Oman including commercial mobile wireless services, subject to "requirements necessary to satisfy legitimate public policy interests". **Note:** - No such provision exists in the WTO. - According to Article 8.11 of the Telecommunications Regulatory Act (30/2002) of Oman, one of the objectives of the TRA is to *prepare the necessary technical specifications and standards for the import and use of Telecommunications Equipment or for the purpose of achieving connection or interconnection, in particular between the telecommunications*

	equipment of the licensees to the telecommunications systems, and to take the necessary actions to publish such specifications. - However, such an authority will be likely restricted under the FTA, as U.S. suppliers are given the right to supply telecom services in Oman through any type of technology they choose without being hindered by the TRA. - Thus, the TRA might need to modify Article 8.11 of the Telecom Act according to the requirement of Article 13.14 of the FTA.

Source: Compiled by the author from (Oman-U.S. FTA: Chapter 13).

Appendix 6.15: Comparative analysis between chapter 13 of the FTA and multilateral arrangements on telecommunications
Category three: Exceptions from the obligations of chapter thirteen of the FTA

Topic	Main content
Special exceptions for the supply of telecom services in rural areas **FTA provision:** -Annex 13-A (paragraphs 1+2) Annex 13-B (paragraphs 1+2) **WTO provision:** No similar provisions under the WTO	Both Annexes 13-A and 13-B to chapter 13 of the FTA provide exceptions where telecom services in "rural areas" in both Oman and the U.S. are exempted from the obligations of some provisions of chapter 13. **First: Oman** - According to paragraph 1 of Annex 13-A, obligations of "resale and number portability" as defined in Articles 13.3.2 and 13.3.3 respectively do not apply to telecom services supplied in rural areas of Oman, unless the TRA decides otherwise. - According to paragraph 1 of Annex 13-B, obligations of "resale, unbundling networks element, provisioning and pricing of leased circuits services, co-location, and access to poles, ducts, conduits, and rights-of-way[1]" that are all defined in Articles 13.4 do not apply to telecom services supplied in rural areas in Oman unless the TRA decides otherwise. **Second: the U.S.** - According to paragraph 2 of Annex 13-A, rural exchange carriers in the U.S. may be exempted from the obligations of "resale, number portability, and dialing parity" that are defined in Articles 13.3.2, 13.3.3, and 13.3.4. - According to paragraph 2 of Annex 13-B, rural telephone companies and rural local exchange carriers in the U.S. may be exempted from all the obligations contained in Article 13.4. **Notes:** - It can be observed that the exceptions provided to rural telephone companies and rural local exchange carriers in the U.S., in Annexes 13-A and 13-B, are more than those provided to telecom supplies in rural areas of Oman. - This further supports the earlier findings that the U.S. seeks all possible means of protection to its local businesses from competition of other countries. - Under Annex 13-A, telecom services supplied in rural areas in Oman are exempted from two obligations; "resale and number portability", unless the TRA decides otherwise.

[1] These obligations are provided in paragraphs 3,4,6,7, and 8 of Article 13.4 respectively.

	- However, U.S. rural local exchange carriers are exempted from these two obligations as well as from the obligation of "dialing parity". - Thus, in case of Oman, there is no exemption made in relation to the obligation of "dialing parity". This means that Oman must ensure that Omantel which supplies public telecom service in rural areas must provide dialing parity services to U.S. suppliers and grant them non-discriminatory access to telephone numbers, directory assistance, directory listing, and operator services with no unreasonable dialing delays. - Ironically, however, rural local exchange carriers in the U.S. are exempted from these obligations. - Under Annex 13-B, obligations of "resale, unbundling networks element, provisioning and pricing of leased circuits services, co-location, and access to poles, ducts, conduits, and rights-of-way"[2] of Article 13.4 do not apply to telecom services supplied in rural areas in Oman unless the TRA decides otherwise (paragraph 1, Annex 14-A, FTA). - However, once again, rural local exchange carriers and rural local telephone companies in the U.S are not only exempted from these obligations, but also from all other obligations listed in Article 13.4, as demonstrated below. **- First: obligation of treatment by major supplier** - This obligation means that each party must ensure that its major supplier does not accord its subsidiaries, affiliates, or non-affiliate services more favourable treatment than what is accorded to suppliers of the other party. - However, major suppliers in the U.S. are exempted from this obligation in rural areas. Thus, they can accord their subsidiaries, affiliates, or non-affiliate involved in supplying telecom services to rural areas in the U.S. more discriminatory treatment than what is accorded to other suppliers of public telecom services. - However, Oman is not permitted to make a similar exemption in regard to telecom services in rural areas. - Omantel must not accord its subsidiaries or affiliates more favourable treatment than that accorded to U.S. suppliers even in case of telecom services supplied to rural areas. **Second: anti-competitive safeguards** - Rural local exchange carrier and any rural telephone company in the U.S. are also permitted to carry out anti-competitive safeguards. - However, Oman is not permitted to make a similar exemption with regard to telecom services in its rural areas. **Third: interconnection** - Rural local exchange carrier and any rural telephone company in the U.S. can also be exempted from the

[2] These obligations are provided in paragraphs 3,4,6,7, and 8 of Article 13.4 respectively.

	obligation of interconnecting their facilities and equipment with Omani suppliers that might want to invest in rural areas in the U.S. - Hence, all the conditions and obligations provided in Article 13.4.5 in relation to interconnection will not be applicable to rural carrier and telephone company in the U.S. - However, Oman is not exempted from the interconnection obligations in regard to telecom services in rural areas. - Moreover, according to a footnote to paragraph 1 of both Annexes 13-A and 13-B, all the exceptions provided in case of telecom services supply to rural areas in Oman are made subject to a very strictly specified definition of "rural areas". - This implies that if any of the specified descriptions outlined in the definition is not met, then the above-mentioned exceptions will not be applicable in the case of Oman. - The definition of "rural areas" for Oman contains the following three specifications. A) A rural area applies to any community that was not yet supplied with telecom services by Omantel as of January 2005. Hence, any rural area that had received telecom services before January 2005, will not be able to enjoy the above-outlined exemptions. B) The community of the rural area does not have a total population of more than 1,000 inhabitants. Hence, if the number of inhabitants exceeds 1,000, telecom suppliers in the rural area will not be able to benefit from the exemptions. C) The community of the rural area does not have a fixed telephony penetration rate of more than ten percent of the population. Thus, if the fixed telephony penetration rate exceeds 10 percent of the population, telecom suppliers to rural area will not enjoy any exemption. - Ironically, however, in the case of the U.S. there is no such definition required for rural areas.
Special exceptions for the supply of commercial mobile services. **FTA provision:** Annex 13-A (paragraphs 3+4). Annex 13-B (Paragraphs 3+4)	- Commercial mobile services are *public telecom services supplied through mobile wireless means* (Article 13.17, the FTA). - Both Annexes 13-A and 13-B of the FTA provide exceptions where commercial mobile services for both Oman and the U.S. are exempted from the obligations of some provisions of chapter 13. **First: Oman** - According to para 3 of Annex 13-A, and para 4 of Annex 13-B, obligations of "resale" as conditioned in Articles 13.3.2 and 13.4.3 do not apply to suppliers of commercial mobile services in Oman.

WTO provision: No similar provisions under the WTO	**Second: the U.S.** - According to paragraph 4 of Annex 13-A, obligations of "resale, number portability, and dialing parity" of Articles 13.3.2, 13.3.3, and 13.3.4 do no apply to the U.S. with respect to suppliers of commercial mobile services. - According to paragraph 3 of Annex 13-B, all the provisions and obligations of Article 13.4 do not apply to the U.S. with respect to suppliers of commercial mobile services. **Note:** - Once again, it can be observed that the exceptions provided for the U.S. with respect to suppliers of commercial mobile services, in Annexes 13-A and 13-B, are more than those exceptions provided for Oman, which further demonstrates the U.S. resort to protectionism whenever possible. - Under both Annexes 13-A and 13-B, the only exemption provided for Oman with respect to commercial mobile services is "resale". This means that Oman can apply discriminatory conditions and limitations against U.S. suppliers regarding "resale" of commercial mobile services. - However, the exemptions accorded to the U.S. with respect to mobile commercial services far exceed what is permitted for Oman. - First: Annex 13-A exempts the U.S. from abiding by conditions of "resale, number portability, and dialing parity" with respect to suppliers of commercial mobile services, while Oman is only permitted to exempt the obligation on "resale". - This means that Oman must abide by the obligations of number portability and dialing parity with respect to commercial mobile services, while the U.S. is exempted from that. - Second: the U.S. is exempted from abiding by all the obligations of Article 3.4 with respect to commercial mobile services. These obligations are namely; non-discriminatory treatment by major suppliers, probation of anti-competitive safeguards, unbundling of network elements, interconnection, provisioning and pricing of leased circuits services, co-location, access to poles, ducts, conduits, and rights-of-way. - Ironically, Oman is obliged to abide by all the conditions provided in these obligations, with the sole exceptions of resale, but the U.S. can entertain full exemptions from abiding by all these obligations with regard to commercial mobile services suppliers.

Source: Compiled by the author from (Oman-U.S. FTA: Chapter 13).

Appendix (6.16): TRIMs extension requests

Country	Length of extension requested	TRIM measure
Argentina	7 years to31 December 2006	Automotive industry
Chile	1 year to 31 December 2001 (originally to 31 May 2001)	Exemption from customs duties for CKD/SKD auto units when off-set by exports
Colombia	7 years to 31 December 2006	Imports subject to absorption of domestic products
Egypt	5 years to 31 December 2004	Rescued customs duties on imported components incorporated in domestic assembly
Malaysia	2 years to 31 December 2001	Local content policy on motor vehicles, target of 60 percent for cars and motorcycles and 45 percent for commercial vehicles
Mexico	4 years to 31 December 2003	Measures relating to automotive industry and auto transportation vehicles
Pakistan	Minimum of 7 years from January 2000	Rescued customs duties on imports of raw material, components, and parts for domestic assembly
Philippines	Five years to 31 December 2004	Local content and foreign exchange requirement for cars, motorcycles, and commercial vehicles.
Romania	Five years to 31 December 2004	Companies with foreign capital of US$560 million subject to integration value degree of 60 percent and exmport of minimum 50 percent of annual value of production
Thailand	Five years to 31 December 2004	Local content requirement for production of milk and dairy products

Source: Department of Trade and Industry – U.K (2001).

Appendix (6.17): Oman's non-conforming measures as stipulated in its schedules in Annexes I, II, and III of the FTA

Issue/ sector	Conditions imposed
Land ownership (investment)	U.S. nationals and enterprises may own real estate in Oman but only in designated tourist areas, which will cover most major tourist areas in Oman by ten years after the date of entry into force of the Agreement. U.S. nationals and enterprises may also enter into fifty-year renewable leases for real estate in all areas of Oman. Note. According to Oman's schedule of specific commitments under the GATS, Oman has imposed a more protective measure as the purchase of land and real estate is not permitted for foreign companies and foreign individuals. But, service suppliers will have the right to 50 year renewable leases for land and buildings necessary to engage in service activities. There is no concession made for foreign companies to own real estates in tourist areas.
Legal services (investment)	U.S. investors may own up to 70 percent of the equity in any enterprise established in Oman that supplies legal services. However, this limitation does not apply to any such enterprise that was established in Oman as of the date of entry into force of the FTA. Note. This limitation matches Oman's commitment under the WTO.
Real estate brokerage services (investment and cross-border services)	Only Omani nationals and enterprises owned by Omani nationals may supply this service. Note. This commitment goes a long with the Omanisation objective. But, it is not a "sensitive" sector nor is it of an important interest to U.S. investors as is the case in telecom, financial services, and government procurement.
Employment placement services (investment and cross-border services)	Only Omani nationals and enterprises owned by Omani nationals may supply this service. Note. See the above note on real brokerage services
Investigation and security services (investment and cross-border services)	The Royal Oman Police has the authority to restrict the supply of investigation and security services to only Omani nationals and enterprises owned by Omani nationals. Note. No reference is made for investigation and security services under the WTO, which means that they are not subject to any trade liberalisation. Also, it is important to note that the Royal Oman Police is not the only institution responsible for providing investigation and security services in Oman. There are other entities such as the Public Persecution and Internal Security. Hence, it is not clear whether this exception would be applicable to these entities.
Printing and publishing services (investment)	Only Omani nationals and enterprises owned by Omani nationals may publish and print books, newspapers, and other written materials in the territory of Oman for circulation to the public. Note. This restriction only applies to publications of written materials, which implies that other types of publications (audio and visual) may be subject to the obligations of chapter ten. See also the above note on real brokerage services
Retail photographic services (investment)	The MOCI has the authority to restrict the supply of retail photographic services to only Omani nationals and enterprises owned by Omani nationals. Note. See the note on real brokerage services
Radio and television transmission services (investment)	Only Omani nationals and enterprises owned by Omani nationals may supply free-to-air radio and television transmission services in the territory of Oman. Note. See the note on real brokerage services
Retailing services (investment)	U.S. nationals may own up to 70 percent of the equity in any enterprise established in Oman that is valued at less than $5 million and supplies retailing services. If the value exceeds $5 million, U.S. nationals may own up to 100 percent of the equity. But, after 31 December 2010 U.S. nationals may

	own up to 100 percent of the equity in any enterprise established in Oman that is valued at greater than $1 million and that supply retailing services. Note. Retailing is a sector which absorbs substantial national investments. Unlike some other sectors, it deserves to be described as "sensitive". Under the WTO, any establishment in retailing sector must entail at least 30 percent Omani equity, which is still a substantial percentage that allows Omanis to stay competitive in the retailing market. However, under the FTA such an obligation will be completely wiped out after 2010 and the Omani retailers must face the challenge of 100 percent U.S. suppliers that are valued more than $1 million. -It is also important to note that perhaps the deadline December 2010, which is allocated for the U.S. enterprises to own 100 percent retail enterprises whose capital is more than $1 million, was to allow Omani enterprises enough time to prepare themselves for this measure. However as the implementation of the FTA was adjourned to January 2009, Omani enterprises only have around two years to face such a challenge than was originally planned in January 2006 when the FTA was signed.
Tourist guide services (investment and cross-border services)	Only Omani nationals and their owned enterprise may serve as licensed tour guides in the territory of Oman. Note. This commitment goes a long with the Omanisation objective. But, it is not a sector that seems of a great interest to U.S. investors.
News agency services (investment)	U.S. nationals may own up to 70 percent of the equity in any enterprise established in Oman that supplies news agency services Note. There is no specific mentioning made for this sector under the WTO, which means that it is not subject to the GATS provisions. But, under the FTA, U.S. nationals may own up to 70 percent equity in news agency services.
Internal waterway transportation services (investment and cross-border services)	Only Omani nationals and their owned enterprises may supply transportation services on Oman's internal waterways. Note. This commitment goes a long with the Omanisation objective.
Maritime freight transportation (investment)	U.S. nationals may own up to 70 percent of the equity in any enterprise established in Oman that supplies maritime freight transportation services. Note. A similar commitment is made under the WTO. Thus, the recommitment under the FTA has locked-in Oman's obligation. Under the WTO, Oman, based on positive list approach, is committed to liberalise the following services at the port and agreed to make them available to international maritime transport suppliers on non-discriminatory terms and conditions: pilotage, towing and tug assistance, provisioning, fueling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations including communications, water and electrical supplies, and emergency repair facilities. Hence, any other non-mentioned services related to maritime freight transportation are not subject to liberalisation. But, under the FTA, as based on negative list approach, all types of services connected with maritime freight transportation are subject to liberalisation. The only limitation is that the U.S. ownership in entities supplying these services must not exceed 70 percent.
Taxi transportation services (investment and cross-border services)	Only Omani nationals and enterprises owned by Omani nationals may supply taxi transportation. Note.This commitment goes a long with the Omanisation objective. It is not of a great interest to U.S. investors.
Air transportation services (investment)	Aircrafts that are owned by U.S. nationals or by any enterprise that is owned by U.S. nationals may not transport passengers, goods, or mail between two

	points within the territory of Oman unless they are specifically authorised to do so by the competent Omani authorities. Note. This condition is related to the sovereignty of the country. If not included, it might have enabled the U.S. firms to claim that it had the rights to provide this transport service within Oman.
Specialty air services (Investment and cross-border services)	Aircrafts owned by U.S. nationals or by any enterprise that is owned by U.S. nationals may not supply specialty air services unless they are specifically authorised to do so by the competent Omani authorities. Note. See the above-mentioned comment.
Aircraft maintenance and repair, air transportation selling and marketing and computer air transportation reservation system services (investment)	Foreign nationals may own up to 70 percent of the equity in any enterprise established in Oman that supplies these services. Note. Under the WTO, Oman has made a similar commitment in only two of these sectors; namely maintenance and repair of aircraft, where foreign investors can own up to 70 percent. But, for other services – selling and marketing of air transport services and computer reservation – Oman has limited foreign ownership to 51 percent. See table (6.4). However, Oman's attempt to protect these services is made less effective under the FTA as U.S. investors are allowed to own up to 70 percent of the equity in any enterprise established in Oman that supplies these services.
Restaurant services (investment)	U.S. nationals may own up to 70 percent of the equity in any enterprise established in Oman that supplies restaurant services. Note. Under the WTO, Oman restricts foreign ownership in restaurant services to 49 percent, thus allowing Omani nationals to be in control of these services. However, under the FTA, this will no longer applicable as U.S. investors can own 70 percent of restaurants in Oman. Thus, local restaurants will have to compete against U.S. restaurants. Also, as alcohol and pork meats will be allowed to freely enter Omani market after 9 years from the implementation of the FTA, this implies that U.S. established restaurants in Oman may be able to cheaply sell alcohol and pork meals for the wide non-Muslim community in Oman; an activity that is not allowed – religiously – to carry out by Omanis.
Different small services (investment)	These include: electric supply, electronic household appliance maintenance and repair, bargaining, tailoring, laundry, ladies hair dressing, and instructional driving services, typing, translation, small auto repair, calligraphy, photocopying, and upholstery services. In all these services Oman reserves the right to adopt or maintain any measure regarding natural persons or enterprises that supply those services. Note. The inclusion of these services would serve the Omanisation objective. These services are not of great importance to U.S. investors
Financial services: Banking and other financial services - A	U.S. nationals may acquire up to 70 percent of the equity of any licensed bank that is locally incorporated. This limitation does not apply to wholly foreign-owned subsidiaries and branches of foreign banks. Note. Similar commitments are made under the WTO. The FTA locks-in these commitments.
Financial services: Banking and other financial services - B	Oman may grant to the Oman Housing Bank and the Oman Development Bank advantages, including but not limited to the following: extension of state guarantee, exemptions from and certain prudential requirements, infusion of fresh capital, and other subsidies. Note. This specific reference to these two banks reflects their social and development support for Omani people and industries.
Financial services: Banking and other financial services - C	With respect to a U.S. banking subsidiary in Oman, Oman reserves the right to adopt or maintain reciprocity test that mirrors any citizenship requirement imposed by the U.S. chartering authority on the board of directors of a foreign owned bank incorporated in its jurisdiction.

	Note. No mentioning is made under the WTO to such a clause which means that Oman automatically reserves such a right. It is also important to note that Oman's schedule under the GATS makes special limitations on commercial presence (mode 3), on the followings; 1) The aggregate holding by (a) an individual and his relating parties, (b) an incorporated body and its related parties, and (c) a Joint-Stock Company or a Holding Company and its related parties, in a locally incorporated bank (other than wholly foreign-owned subsidiaries) shall not exceed 35% of the voting shares of the bank. 2) Number of bank branches in Muscat limited to four for each bank (whether local or foreign). However, these limitations are not mentioned in any of the Oman's schedules of the FTA, which implies that they may not be applicable to U.S investors!
Telecommunications services	Oman reserves the right to adopt or maintain any measure that requires telecom suppliers to 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 (see the analysis on telecommunications in Appendix 6.13). Note. This condition is also imposed in Oman's GATS schedule.

Source: Compiled by the author from (Oman-U.S. FTA, Annexes I, II, and III).

Appendix (6.18): steps of dispute settlement under chapter ten

Steps	Details
Step one: consultation and negotiations (Article 10.14)	- In the event of an investment dispute, the claimant and the respondent should firstly seek to resolve the dispute through consultation and negotiation. - According to Article 10.27 (definitions), *the claimant means an investor of a Party that is a party to an investment dispute with the other Party.* Hence, any investment company from either the U.S. or Oman can be the claimant. But, the respondent is defined as *the Party that is a party to an investment dispute.* Hence the respondent has to be the government of the other party. - The Article does not impose any time limitations on consultation and negotiation, as is the case under the WTO or chapter twenty of the FTA.
Step two: submission of a claim to arbitration (Article 10.15)	- If consultation and negotiation fail, the claimant may resort to arbitration by claiming that it has incurred loss or damage as a result of the respondent's breach of its obligations (Article 1015.1). - If a claimant decides to resort to arbitration, it must send a written notice to the respondent about its intention at least 90 days before submitting any claim to arbitration (Article 10.15.2). However, a resort to arbitration cannot be made before six months from the day the event took place. - But, no claim can be submitted to arbitration after three years from the date on which the claimant first acquired, or should have acquired, knowledge of the alleged of the breach (Article 10.15.3). - Both parties must consent to the submission of a claim to arbitration.
Step three: selecting arbitrators (Article 10.18)	- The tribunal shall comprise three arbitrators, each disputing party shall appoint one tribunal, and the third, who acts as the presiding arbitrator, is appointed by agreement of the disputing parties. But, both disputing parties shall agree to the appointment of each individual member of the tribunal. - If a tribunal has not been constituted within 75 days from the date of submission of the claim to arbitration, the Secretary General of the International Centre for Settlement of Investment Disputes (ICSID)[1], on the request of a disputing party, shall appoint the arbitrator or arbitrators not yet appointed.
Step four: selecting a place (Article 10.19.1)	The disputing parties may agree on the legal place of any arbitration. If they fail to agree, the tribunal shall determine the place, *provided that the place shall be in the territory of a State that is a party to the New York Convention*[2].
Step five: respondent's objections: stage one (Article 10.19)	Any objection made by the respondent must be addressed and decided by the tribunal but with the considerations to the followings. First, the objection shall be submitted to the tribunal soon after the tribunal is constituted and no later than the date the tribunal fixes for the respondent to submit its counter-memorial. Second, once the objection is received, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection, and issue a decision or award on the objection (Article 10.19.4).
Step six: respondent's objections: stage two (Articles	- If a respondent defends that the measures alleged by the claimant to be a breach is within the scope of an entry set out in Annex I or Annex II, the tribunal shall, on request of the respondent, request the interpretation of the Joint Committee on the issue.

[1] The ICSID is an institution of the World Bank Group based in Washington. It provides facilities for the conciliation and arbitration of investment disputes between its member countries which signed the ICSID convention and individual investors. The ICSID has an Administrative Council, chaired by the World Bank's President, and a Secretariat. Both Oman and the U.S. are members to the ICSID.

[2] New York Convention is the short title of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which requires courts of its signatories to give effect to provide agreement to arbitrate and recognise and enforce arbitration awards made in other signatories. The Convention is broadly regarded as the fundamental instrument for international arbitration (UN Commission on International Trade Law, 2008).

10.21 and 10.22)	- The JC shall submit in writing any decision declaring its interpretation under Article 19.2.3.b to the tribunal within 60 days of delivery of the request. The JC decision is binding on the tribunal and any decision or award issued by the tribunal must be consistent with that decision. - If the JC fails to issue such a decision within 60 days, the tribunal shall decide the issue.
Step seven: protecting information (Article 10.20)	- Any disputing party that intends to use information designated as protected information in a hearing shall advise the tribunal. The latter shall ensure the protection of the information from disclosure. - A disputing party shall, at the time it submits a document containing information claimed to be protected information, submit a redacted version of the document that does not contain the information. Only the redacted version shall be provided to the non-disputing Party and made public.
Step eight: expert reports (Article 10.20)	A tribunal may appoint one or more experts to report to it in writing on any factual issue concerning environmental, health, safety, or other scientific matters raised by a disputing party in a proceeding.
Step nine: tribunal decision (Article 10.19.9)	- A tribunal shall transmit its proposed decision or award, before the final issuance, to the disputing parties. - Within 60 days after the tribunal transmits its proposed decision or award, the disputing parties may submit written comments to the tribunal. - The tribunal shall consider the comments of the disputing parties and issue its decision or award not later than 45 days after the expiration of the 60-day period.
Step ten: awards (Article 10.25, paragraphs 1-4)	Where a tribunal makes a final award against a respondent, it may award; 1) monetary damages and any applicable interest to be paid to the enterprise (the claimant), 2) restitution of property, in which case the award shall provide that the respondent may pay monetary damages and any applicable interest to the enterprise instead of restitution 3) a tribunal may also award costs and attorney's fees. Yet, a tribunal may not award punitive damages.
Step eleven: enforcement of awards (Article 10.25)	- A disputing party shall abide by and comply with an award without delay. - Each Party shall provide for the enforcement of an award in its territory (Article 10.25, paragraphs 5-7). - If the respondent fails to abide by or comply with the final award, a panel shall be established under Article 20.7 (Establishment of Panel). The requesting party may seek in such proceedings: a) a determination that the failure to abide by or comply with the final award is inconsistent with the obligations of the FTA; and b) in accordance with Article 20.9.2 (Panel Report), and b) a recommendation that the respondent abide by or comply with the final award (Article 20.25, paragraph 8). - A disputing party may seek enforcement of an arbitration award under the ICSID Convention or the New York Convention regardless of whether proceedings have been taken under paragraph 8 of Article 10.25

Source: Compiled by the author from (Oman-U.S. FTA, chapter 10).

Appendix 7.1: From the WTO to the U.S. FTA: Chronological background on Oman's involvement in multilateral and bilateral trade approaches

Date	Event
April 1995	Government of Oman enjoyed the status of "observer" to the WTO.
April 1996	Government of Oman officially applied for accession to the WTO
26 June 1996	The General Council established a Woking Party to examine the application of Oman to accede to the WTO.
30 April 1997	The first meeting between the Working Party and Oman's negotiating team was held
October 1997	Oman presented to the Working Party a memorandum on its trade policy
6 July 2000	The final meeting between the Working Party and Oman's negotiating team was held in which the Working Party finally agreed about Oman's accession to the WTO.
10 October 2000	Oman and the WTO signed the Protocol of Oman's accession to the WTO
9 November 2000	Oman became an official member to the WTO
15 November 2000	The Sultan of Oman issued the Royal Decree No. 112/2000 to ratify the Protocol of Oman's accession to the WTO.
11 February 2001	The Council of Ministers decided to establish a national committee to follow up the implementation of WTO regulations and Doha negotiations. The committee is headed by the MOCI and consists of members from: Ministry of National Economy, Ministry of Agriculture and Fisheries, Ministry of Transport and Communications, Ministry of Oil and Gas, Ministry of Health, Ministry of Information, Oman Royal Police, Central Bank of Oman, and Oman Chamber of Commerce and Industry.
9-14 November 2001	Oman officially participated in the Doha Ministerial Conference held in Qatar where a welcoming message was presented to new members, including Oman.
28 October 2003	The Council of Ministers of Oman agreed to enter in TIFA and FTA negotiations with the U.S.
7 July 2004	Oman and the U.S. signed the TIFA in Washington and as a result the Omani-U.S. Council was established.
8-19 July 2004	Ministry of Commerce and Industry (MOCI) sent letters to different Ministries informing them about signing the TIFA and calling them to attend a meeting that would be held in the MOCI on 21 July 2004 to explore the details of the TIFA.
21 July 2004	The Undersecretary of Ministry of Commerce and Industry chaired a meeting with representatives from different government institutions such as Ministry of National Economy, Ministry of Finance, Ministry of Oil and Gas, and Ministry of Transport and Communications as well as the Oman Chamber of Commerce and Industry, to inform them about: 1) the TIFA and its main contents and objectives; 2) the establishment of the Omani-U.S. Council and its nature; 3) the Government's intention to start the FTA negotiations with the U.S.
20-21 September 2004	The first meeting of the Omani-U.S. Council for Trade and Investment was held in Washington.
13-15 October 2004	USTR Robert Zoellick visited Oman and the UAE to discuss the project of initiating FTAs negotiations with both countries individually.
15 November 2004	As per the requirements of Trade Act 2002, USTR Robert Zoellick sent two letters to the House of Representatives and the Senate about the Administration's intent to initiate FTA negotiations with Oman.
6 December 2004	The Ministry of Commerce and Industry sent a letter to the Ministry of National Economy asking it for its opinions about the FTA.
18 December 2004	The MNE replied to the MOCI with some conservative views about the benefit of the U.S. FTA on Oman's economy.
20-30 December 2004	MOCI called different Ministries and Oman Chamber of Commerce and Industry for an important meeting on the FTA.
2 January 2005	The meeting was chaired by the Minister of Commerce and Industry and attended by

	representatives from different ministries and two business people (members in the board of the Oman Chamber of Commerce and Industry), where it was decided to form different negotiating teams. Each team was tasked to study one or two chapters of the Bahrain-U.S. FTA. Each team would include at least one representative from the business community.
7-9 February 2005	A delegation from Oman visited Bahrain to learn from Bahrain's experience.
13 February 2005	The draft of Oman-U.S. FTA was received by the MOCI from the U.S.
13-28 February 2005	The U.S. asked Oman to exclude business people from the negotiations because they were government to government task; a move that led to dissatisfaction amongst the business community.
8 March 2005	The U.S. started FTA negotiations with the neighbouring UAE.
12 March 2005	Oman and the U.S. began the first round of the FTA negotiations in Muscat.
14 March 2005	The end of the first round of the Oman-U.S. FTA negations.
Around 22 March 2005	A UAE team visited Oman to discuss the possibility of organising negotiating positions with Oman in their FTAs with the U.S. But, Oman thought that it was already ahead with its negotiations with the U.S. and around 80 percent of the issues were agreed about. Thus, tying up Oman's position with the UAE may delay the finalisation of its negotiations.
18-22 April 2005	The second round of the FTA negotiations between Oman and the U.S. was held in Washington. Mostly the heads of the teams only went to Washington
23 April- 2 October 2005	Negotiations continued via video conferences and internet on remaining issues.
3 October 2005	Oman and the U.S. concluded the FTA negotiations
17 October 2005	President Bush formally notified the Congress about his intention to sign the FTA with Oman.
18 October 2005	The draft text was made available to the public by the office of the USTR.
18 November 2005	The office of the USTR transmitted to the President and Congress reports from 27 trade advisory committees supporting the Oman FTA.
19 January 2006	USTR Rob Portman and Omani Minister of Commerce and Industry officially signed the Oman-U.S. FTA in Washington.
26 June 2006	President George Bush transferred the Oman FTA to the Congress for its approval.
9 July 2006	A Royal Decree was issued to amend Oman's 2003 labour law.
20 July 2006	The House of Representatives passed the Oman FTA by a vote of 221-205.
19 September 2006	The Oman FTA implementation bill was passed by the Senate by a vote of 62-32.
26 September 2006	President George Bush signed the Oman-U.S. FTA to become a law
15 October 2006	The Sultan of Oman issued the Royal Decree number 109/2006 ratifying the Oman-U.S. FTA.
15 October 2006-31 December 2008	Oman underwent through a complicated comprehensive process of reforming its domestic laws on different issues and sectors related to the FTA such as; tender board, telecommunications, investment, labour, environment, rules of origin...etc
1 January 2009	The FTA officially entered into force.

Source: Complied by the author (2009).