

Testimony of Thea M. Lee, Policy Director American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) before the Subcommittee on International Trade of the Senate Committee on Finance

March 6, 2006

Hearing on the Implementation of the United States-Oman Free Trade Agreement

Good afternoon, Mr. Chairman, Senator Bingaman, and members of the Subcommittee. I thank you for the opportunity to testify today on behalf of the 9 million working men and women of the AFL-CIO on the U.S.-Oman Free Trade Agreement (FTA). Trade policy in general, and this agreement in particular, are of great interest and concern to our members, to America's workers, and to workers in Oman as well.

In our view, the Oman FTA provides precisely the wrong answers to the challenges faced in Oman and the United States. The agreement is based on a failed model that neither addresses the problems confronted by workers in Oman, nor contributes to the creation of good jobs and decent wages at home. The workers' rights provisions are entirely inadequate to ensure that workers' fundamental human rights are respected, and the dispute settlement mechanism for workers' rights and environmental protections is far weaker than that available for commercial provisions. At the same time, flawed provisions on services, investment, government procurement, and intellectual property rights will undermine the ability of both governments to protect public health, strong communities, and the environment.

In addition to the problems outlined above with the Oman FTA template, which are common to all the FTAs negotiated by this Administration, we have very serious concerns about Oman's labor laws. We have reviewed Oman's labor laws in great detail, and we have consulted a number of sources, including the annual State Department Human Rights reports, the International Labor Organization (ILO), and the International Confederation of Free Trade Unions (ICFTU) annual survey of workers' rights, as well as the actual Omani labor law, as issued by the Sultanate of Oman's Ministry of Manpower.

Oman's labor laws are egregiously out of compliance with the ILO core labor standards, and we are deeply concerned about the lack of fundamental protections for Omani workers in both law and practice. Oman's labor laws do not provide for the exercise of the most important and fundamental workers' rights: freedom of association and the right to organize and bargain collectively. ILO standards call for workers to be able to form their own organizations, free of interference from employers or government. Omani labor law, in contrast, provides the government with an entirely inappropriate level of oversight and control over the activities, meetings, finances, and selection of representatives of the national and industrial "worker representative committees." In addition, the laws fail to explicitly protect workers who participate in the worker committees from anti-union discrimination, nor do they spell out protections for workers who choose to engage in strikes.

In conjunction with the weak and inadequate labor provisions included in the Oman FTA, these enormous problems in Omani labor law constitute an insurmountable obstacle, in our view, to a speedy passage of this FTA.

The problems we have identified in Omani labor law are fundamental to viable democratic processes and rights. While we recognize and welcome the efforts the government is making, with the assistance of the ILO, to improve its labor laws, we should not underestimate the magnitude of the changes needed. The complete absence of strong and independent institutions of representative democracy in Oman means that meaningful changes are unlikely to occur quickly – certainly not in time for passage of this deal this year.

Furthermore – and even more important – the labor provisions included in the Oman FTA do *not* include any enforceable provisions preventing the weakening of or derogation from domestic labor laws. This means that even in the rosier of scenarios, where Oman's labor laws were brought fully into compliance with ILO standards over the next couple of months, the U.S. government would have absolutely no recourse to dispute settlement or enforcement if a future Omani government were to reverse those gains and weaken or gut Oman's labor laws after Congressional passage of the FTA. And because Omani workers do not have any voice in electing their government, they would not be in a position to vote out of office a government that chose to weaken their labor laws.

The AFL-CIO has on numerous occasions conveyed our grave concerns about Oman's labor rights situation to the Administration. In January 2004, we testified before the Trade Policy Staff Committee that in our view Oman is "an egregious and outright violator of the most fundamental core labor standards of the International Labor Organization"; in 2004 and in 2005, we submitted petitions to revoke Oman's trade benefits under the Generalized System of Preferences program (GSP), due to Oman's "systematic" denial of the right to freedom of association, among other serious infringements; and last November, the Labor Advisory Committee on Trade Negotiations and Trade Policy (LAC) submitted its report to the U.S. Trade Representative, reiterating these concerns. Regrettably, our concerns were not addressed in the negotiation of the labor provisions of the FTA.

In addition to our concerns on Oman's labor situation, any vote on the Oman FTA must take into account the broader economic reality that we are facing today. Our trade deficit hit a record-shattering \$726 billion last year; we have lost more than three million manufacturing jobs since 1998; and average wages have not kept pace with inflation this year – despite healthy productivity growth. The number of people in poverty continues to grow, and real median family income continues to fall. Offshore outsourcing of white-collar jobs is increasingly impacting highly educated, highly skilled workers – leading to rising unemployment rates for engineers and college graduates. Together, record trade and budget deficits, unsustainable levels of consumer debt, and stagnant wages paint a picture of an economy living beyond its means, dangerously unstable in a volatile global environment.

The AFL-CIO Executive Council adopted a statement last week calling for a moratorium on all new free trade agreements, including with Oman, until we can rewrite them to protect and advance workers' interests.

Trade Impacts of the Oman FTA

While the overall trade relationship with Oman is small relative to the economy of the United States, it is possible that the agreement will result in a deteriorating trade balance in some sectors, including sensitive sectors such as apparel. Even where the market access provisions of the agreement themselves may not have much of a negative impact on our trade relationship, these provisions when combined with rules on investment, procurement, and services could further facilitate the shift of U.S. investment and production overseas, harming American workers.

The dramatically lower costs of energy in Oman provide enormous opportunities for energy-dependent industries to use the country as an export platform. As is the case with the United Arab Emirates (UAE), where a foreign glassware manufacturer has set up shop and may use the UAE's natural gas -- which costs less than 1/12th of what it does in the U.S. -- to flood the U.S. market with glassware, a similar opportunity exists with Oman.

Chemical manufacturers, energy interests and others could similarly benefit from Oman's energy pricing structure. Oman, like many other energy-rich nations, has a built-in advantage in low energy costs. But, beyond this initial advantage, energy costs to Oman's manufacturing interests do not reflect market prices. Additionally, the failure of the United States to have a comprehensive energy policy to ensure long-term stable supplies and affordable prices puts the U.S. at a substantial disadvantage. The failure of the Bush Administration to aggressively address energy costs has serious repercussions for our manufacturing sector and, indeed, for all energy consumers. The U.S.-Oman FTA will exacerbate that disadvantage by providing enhanced access to the U.S. market without addressing the non-market pricing of energy.

Labor Provisions of the Oman FTA

Unfortunately, the Oman FTA labor provisions actually constitute a step backwards from existing labor rights provisions in the U.S. – Jordan FTA and in our Generalized System of Preferences (GSP) program. In the Oman agreement, only one labor rights obligation – the obligation for a government to enforce its own labor laws – is actually enforceable through dispute settlement. All of the other obligations contained in the labor chapter, many of which are drawn from Congressional negotiating objectives, are explicitly not covered by the dispute settlement system and are thus completely unenforceable.

Labor Rights in Oman

Oman does not come close to meeting International Labor Organization (ILO) criteria for compliance with core labor standards, and the weak and inadequate labor rights

protections in this agreement will allow these severe deficiencies in Oman's labor laws to persist.

The most serious issue is Oman's systematic denial of workers' freedom of association. The Omani government is in egregious violation of ILO conventions and universally accepted international practice.

A review of Oman's current Labor Law, issued by decree in 2003,¹ reveals a pattern of exceptions to the very standards it proclaims as law, from the exclusion of foreign domestic workers and civil servants from protection under the law, to loopholes that allow for a wide variety of interpretations of basic rights. This leaves workers dependent not upon the law, but upon the discretion of powerful vested interest groups that form the core of a semi-authoritarian regime.

Ministry of Manpower Decrees 135 and 136, issued in 2004, outline stringent and inappropriate government oversight parameters for both worksite level committees and a national committee intended to serve as a national representative body.² The government reserves the right to "be notified one month prior to each meeting of the general assembly with a copy of the invitation letter, agenda, documents and papers relating to the issues to be discussed," and to "delegate who it chooses to attend the meeting." It also requires the committees to provide minutes of all meetings to the government and reserves the right to review the dues structure. All of these requirements constitute violations of ILO standards of freedom of association.

In its defense of the provision allowing Ministry delegates to attend worker committee meetings, the government has said that "the presence of the representative from the Ministry is to help the committee in case of their need to consult with the Ministry on any issue." It certainly seems that if the worker committees need advice from the government, they could ask for it, rather than having a government presence at all their meetings ordained in labor law.

The government has claimed that "eleven members [of the Main Representative Committee] were all elected from the existing Representative Committees and are all workers." This is untrue. The government appointed at least some of the members of the Main Representative Committee, and five of them actually serve in management positions within their companies, either as CEOs or Personnel Managers.

¹ ***Omani Labour Code of 26 April 2003 Ministry of Information*** The New Labor Code was issued by Royal Decree No. 35 of 2003, and abrogates the previous Labor Law issued by Royal Decree Nov. 34 of 1973. www.omanet.om/arabic/government/gov20.asp?cat=gov

² Sultanate of Oman, Ministry of Manpower, "Ministerial Decision No. (135/2004), "On Principles of Formation and work of Representative Committees in Establishments," and Ministerial Decision No. (136/2004) –"On Principles of Formation and Work of the Main Representative Committee." May 11, 2004, Translated by POLE: Ahmed Al-Sawei.

Any paid representative of an enterprise with management responsibilities should be disqualified from running for office on either the enterprise level or Main Representative Committee. The candidates in the next round should be allowed to campaign publicly, and democratic elections should be held to decide the officers.

Although the workplace level committees allow for a semblance of rank and file participation through the General Assembly, workers may not join the assembly until they have completed one year of employment. The Minister of Manpower is directly responsible for ratifying the election results for both the workplace and national committees, and may object to any nominee to the administrative bodies who does not meet a set of stringent conditions, including fluency in written and spoken Arabic language, a condition which would disqualify most foreign-born worker from leadership positions (contrary to the USTR factsheet). Non-citizens account for as much as 80% of the private-sector work force (according to the State Department 2004 annual human rights report). Under ILO Standards for Leadership Positions, workers should be able to choose their representatives free of Government or employer interference.

The labor law also decrees that membership in the administrative body [of the worker committee] is terminated in the case that a member "commit[s] any act that causes material or moral harm to . . . the public interest of the Sultanate." Again, this is totally inappropriate.

The labor law prohibits the administrative body of the worker committees outright from "join[ing] any organization or authority with headquarters outside the Sultanate," from sending "delegations outside the Sultanate or receiv[ing] delegations," and even from holding "public festivities or present[ing] public lectures" without the approval of the Minister. ILO standards explicitly lay out that unions may affiliate to international organizations of their choosing, and certainly the government has no business monitoring the travel, visitors, or public festivities and lectures of workers' organizations.

Collective bargaining rights are not guaranteed. While the law provides that "the employer *may* [emphasis added] establish schemes from which workers may get advantages which are more beneficial than what is prescribed, or provide them with other benefits, or enter into agreements with them, the terms of which are more beneficial than the terms provided for in this law," this falls far short of protecting workers' rights to bargain collectively. This provision relies upon employer largesse, permitting such "schemes" to take place if the employer desires it, but not requiring employers to engage in collective bargaining.

While all workers in Oman are denied basic labor rights, the large foreign workforce, who constitute the majority of private-sector workers in Oman, are especially vulnerable to abuse and exploitation. Foreign workers have the right to remain in the country for the duration of their work contracts; but employers are known to hold the passports of guest workers, and in the worst cases of abuse, even deny individuals the ability to extract themselves from dangerous or cruel work conditions. Laws protecting workers from forced labor are not enforced. According to the State Department:

The Government did not investigate or enforce the law effectively. Foreign workers at times were placed in situations amounting to forced labor. Employers have withheld documents that release workers from employment contracts and allow them to change employers. Without such a letter, a foreign worker must continue to work for his current employer or become technically unemployed, which was sufficient grounds for deportation.³

Oman has an equally problematic record on trafficking in persons, according to the State Department's 2004 Trafficking in Persons Report:

Oman is a destination country for women and men who migrate legally and willingly from South Asia –primarily from India, Bangladesh, Pakistan, Sri Lanka, and the Philippines—for work as domestic workers and laborers but are subsequently trafficked into conditions of involuntary servitude. Some of these workers suffer from physical and sexual abuse or withholding of ages or travel documents. . . According to a noted human rights activist, several dozen foreign children trafficked for the purpose of exploitation as camel jockeys were reportedly seen near the border with the United Arab Emirates.⁴

Oman has not taken steps to ensure that its laws afford workers their internationally recognized rights. The establishment of workplace committees and a national representative committee do not substitute for the overhaul in Omani law necessary to bring it into compliance with ILO standards. Despite commitments dating back to the mid-1990s to reform Omani labor laws to make them consistent with the core labor standards of the ILO, this has not yet happened.

The proposed FTA would allow Oman to maintain these restrictions on workers' rights in its law, and even to further limit workers' fundamental rights in the future. Even for the one labor obligation in the FTA that is subject to dispute resolution – the requirement to effectively enforce domestic laws – the procedures and remedies for addressing

³ State Department COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES 2004
<http://www.state.gov/g/drl/rls/hrrpt/2004/41729.htm>

⁴ TRAFFICKING IN PERSONS REPORT – Released by the Office to Monitor and Combat Trafficking in Persons, June 3, 2005: <http://www.state.gov/g/tip/rls/tiprpt/2005/46614.htm>

violations are significantly weaker than those available for commercial disputes in the agreement. This directly violates TPA, which instructs our negotiators to seek provisions in trade agreements that treat all negotiating objectives equally and provide equivalent dispute settlement procedures and equivalent remedies for all disputes.

The labor enforcement procedures cap the maximum amount of fines and sanctions available at an unacceptably low level, and allow violators to pay fines that end up back in their own territory with inadequate oversight. These provisions not only make the labor

provisions of the agreement virtually unenforceable, they also differ dramatically from the enforcement procedures and remedies available for commercial disputes:

- In commercial disputes, the violating party can choose to pay a monetary assessment instead of facing trade sanctions, and in such cases the assessment will be capped at half the value of the sanctions. In labor disputes, however, the assessment is capped at an absolute level, no matter what the level of harm caused by the offending measure.
- Not only are the caps on fines much lower for labor disputes, but any possibility of trade sanctions is much lower as well. In commercial disputes, a party can suspend the full original amount of trade benefits (equal to the harm caused by the offending measure) if a monetary assessment (capped at half that value) is not paid. In a labor dispute, the level of trade benefits a party can revoke if a monetary assessment is not paid is limited to the value of the assessment itself – capped at \$15 million.
- Finally, the fines are robbed of much of their punitive or deterrent effect by the manner of their payment. In commercial disputes under the Oman FTA, the deterrent effect of punitive remedies is clearly recognized – it is presumed that any monetary assessment will be paid out by the violating party to the complaining party, unless a panel decides otherwise. Yet for labor disputes, the violating country pays the fine to a joint commission to improve labor rights enforcement, and the fine ends up back in its own territory. No rules prevent a government from simply transferring an equal amount of money out of its labor budget at the same time it pays the fine. And there is no guarantee that the fine will actually be used to ensure effective labor law enforcement, since trade benefits can only be withdrawn if a fine is not paid. If the commission pays the fine back to the offending government, but the government uses the money on unrelated or ineffective programs so that enforcement problems continue un-addressed, no trade action can be taken.

The labor provisions in the Oman FTA are woefully inadequate, and clearly fall short of the TPA negotiating objectives. They will be extremely difficult to enforce with any efficacy, and monetary assessments that are imposed may be inadequate to actually remedy violations. Given Oman's failure to respect core workers' rights and the huge inadequacies in its labor laws, it is especially problematic to implement an FTA with weak labor protections at this time.

In addition to the very serious problems with the labor provisions of the Oman agreement outlined above, commercial provisions of the agreement also raise serious concerns.

Investment: In TPA, Congress directed USTR to ensure "that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States." Yet the investment provisions of the Oman FTA contain large loopholes that allow foreign investors to claim

rights above and beyond those that our domestic investors enjoy. The agreement's rules on expropriation, its extremely broad definition of what constitutes property, and its definition of "fair and equitable treatment" are not based directly on U.S. law, and annexes to the agreement clarifying these provisions also fail to provide adequate guidance to dispute panels. As a result, arbitrators could interpret the agreement's rules to grant foreign investors greater rights than they would enjoy under our domestic law. In addition, the agreement's deeply flawed investor-to-state dispute resolution mechanism contains none of the controls (such as a standing appellate mechanism, exhaustion requirements, or a diplomatic screen) that could limit abuse of this private right of action. Finally, the marked difference between the dispute resolution procedures and remedies available to individual investors and the enforcement provisions available for the violation of workers' rights and environmental standards flouts TPA's requirement that all negotiating objectives be treated equally, with recourse to equivalent dispute settlement procedures and remedies.

Intellectual Property Rights: In TPA, Congress instructed our trade negotiators to ensure that future trade agreements respect the declaration on the Trade Related Aspects on Intellectual Property Rights (TRIPs) agreement and public health, adopted by the WTO at its Fourth Ministerial Conference at Doha, Qatar. The Oman FTA contains a number of "TRIPs-plus" provisions on pharmaceutical patents, including on test data and marketing approval, which could be used to constrain the ability of a government to issue compulsory licenses as permitted under TRIPs and the Doha Declaration.

Government Procurement: The FTA's rules on procurement restrict the public policy aims that may be met through procurement policies at the federal level. These rules could be used to challenge a variety of important procurement provisions including domestic sourcing preferences, prevailing wage laws, project-labor agreements, and responsible contractor requirements. We believe that governments must retain their ability to invest tax dollars in domestic job creation and to pursue other legitimate social objectives, and that procurement rules which restrict this authority are inappropriate.

Safeguards: Workers have extensive experience with large international transfers of production in the wake of the negotiation of free trade agreements and thus are acutely aware of the need for effective safeguards. The safeguard provisions in the Oman agreement, which offer no more protection than the limited safeguard mechanism in NAFTA, are not acceptable. U.S. negotiators should have recognized that much faster, stronger safeguard remedies are needed. The Oman FTA has failed to provide the necessary import surge protections for American workers.

Services: NAFTA and WTO rules restrict the ability of governments to regulate services – even public services. Increased pressure to deregulate and privatize could raise the cost and reduce the quality of basic services. Yet the Oman agreement does not contain a broad, explicit carve-out for important public services. Public services provided on a commercial basis or in competition with private providers are generally subject to the rules on trade in services in the Oman FTA, unless specifically exempted.

Conclusion

Congress should reject the Oman FTA, and send a strong message to USTR that future agreements must make a radical departure from the failed NAFTA model in order to succeed.

American workers are willing to support increased trade if the rules that govern it stimulate growth, create jobs, and protect fundamental rights. The AFL-CIO is committed to fighting for better trade policies that benefit U.S. workers and the U.S. economy as a whole. We will oppose trade agreements that do not meet these basic standards. We urge the Congress to reject the U.S.-Oman FTA and begin work on just economic and social relationships with Oman.