Before the Office
of
The United States Trade Representative
Section 301 Committee

Section 301 Petition
of
The Institute for Research: Middle Eastern Policy, Inc.

Hand Delivered

Table of Contents

Illustration Index

BEFORE THE OFFICE OF THE

UNITED STATES TRADE REPRESENTATIVE

INSTITUTE FOR RESEARCH: MIDDLE EASTERN POLICY, INC	))))	Petition for Relief Under Section 301(a) of the Trade Act of 1974, as Amended, 19 U.S.C. §§ 2411 et seq.

SUMMARY

The Institute for Research: Middle Eastern Policy represents American citizens and industries residing in 37 states concerned about trade, development and US Middle East policy formulation.

During the spring of 1984 American trade associations, companies and industries provided input solicited by the International Trade Commission and US Trade Representative for development of a classified 300+ page report on proposed duty-free entry of Israeli products into the US market. In August of 1984 the Israeli Government and the American Israel Public Affairs Committee (AIPAC) obtained copies of the classified report *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180.*

Their possession and use of the data contained in the classified report represented the first in a subsequent string of actions denying adequate and effective protection of intellectual property (IP) rights of US industry. This is in violation of the Treaty of Paris and the superseding WTO Agreement on Trade-Related Aspects of Intellectual Property (TRIPS). The International Trade Commission solicited and compiled trade secrets, internal costs, market share and other confidential business information from interested parties under the firm understanding that the data would be considered "business confidential" and used primarily by the USTR to negotiate the most favorable deal for the United States. In 1984 only fifteen numbered copies were circulated to key parties under tight control and scheduled destruction schedules.

The FBI launched an investigation into how AIPAC obtained and circulated copies of the classified report during the most critical negotiation period. The ITC confirmed in 2008 that the Israeli government also obtained a copy of the classified report. Industry groups such as the US Bromine Alliance obtained verification from the ITC on November 1, 1984 that all of their most closely guarded trade secrets had been obtained by AIPAC (see appendix).

In the following quarter century Israeli manufacturers and the Israeli government have continued to systematically violate US IP rights. In the case of American military and defense systems, Israel has a long history of reverse engineering, copying, manufacturing and exporting unauthorized versions of US systems. In doing so, Israeli manufacturers have not only deprived American manufacturers of revenue and US workers high paying jobs, but also negatively altered the strategic and tactical military balance of power. US taxpayers who subsidized the research, development, and deployment costs for weapons have witnessed the tragedy of US military personnel facing weapons on the battlefield from illicitly manufactured Israeli systems obtained by rogue states.

The American pharmaceutical industry has recently faced systemic industry-government violations of IP rights in the form of an ongoing IP "trap" in which confidential clinical dossiers are purposely misused. While US pharmaceutical industry representatives insisted that Israel remain on the USTR Priority Watch List for the past four years, no effective action has been taken against egregious behavior. The Israeli government regulatory agency solicits patented data and formulas under the auspices of granting approval of drugs for the Israeli market. It delays the approval process while data is obtained by Israeli drug-makers. These manufacturers then commercialize cutting edge US innovations world wide. Israeli IP laws have been purposely weakened and placed out of sync with major industrial countries that all permit longer patent terms so inventors can recoup

investments in new drugs before patents expire. The short periods left to recover investments have left US pharmaceutical manufacturers at a major disadvantage to Israeli generic drug manufacturers benefiting from global sales enabled by ever weaker IP protection. US consumers and taxpayers funding medical research are indirectly subsidizing the clinical dossiers upon which Israeli generic drug manufacturers capitalize by selling back into the American market.

The US-Israel Free Trade Area is unique among bilateral FTAs in that it has been marked by years of industry and grassroots protests from various US associations. A comparative analysis against other bilateral FTAs confirms why they have been right to protest. The US-Israel Free Trade Area has been manifestly negative for American workers and businesses by undermining the system of rules based global trade. The burden from the ongoing Israeli commercialization of US IP is most clearly reflected in the bilateral trade deficit.

Since 1989 US-Israel trade has shifted from rough import/export parity into a permanent Israeli surplus and a $71 billion cumulative trade deficit for the US (adjusted for inflation). Among all active bilateral US free trade agreements it is the only agreement producing multi-billion dollar deficits every year since 1997. Indeed, the US has significant surpluses with most other bilateral FTA partners. The Israeli disregard for rules based trade is also now financing and enabling ancillary activities that threaten US national security and regional stability.

Israel's leading duty free export to the American market—precious stones, metals and coins—has grown under the FTA preferences to 20.6% of the total US import demand. But the value chain of Israel's leading export leaves a trail of violence, corruption, and property theft. LLD Diamonds Ltd., owned by Israeli-American Lev Leviev exported $417 million in cut diamonds from Israeli to the US in 2008. Leviev has been cited for human rights abuses in Angola and Namibia where Leviev companies source rough diamonds. Palestinian and Israeli human rights groups have documented how Leviev revenues finance illegal settlement construction in the Israeli occupied West Bank. Leviev's overseas activities not only violate international law, but also US foreign policy initiatives against illegal Israeli colonization. Preferential Israeli access to the US market under the FTA enables LLD Diamond's illicit activities.

In summary, the flawed process that produced the US-Israel Free Trade Area was itself a violation of the IP of American industries. The USTR and ITC are partially culpable for failing to secure sensitive US information that the American Israel Public Affairs Committee and Israel had no right to obtain, possess or utilize. The subsequent pattern of ongoing violations and negative outcomes for American stakeholders place this trade agreement in the column of the types of "failed programs" that President Barak Obama has promised Americans he would reevaluate. IRmep does not join previous Section-301 petitioners seeking further investigations, consultations with the Israeli government for regulations changes, hearings or requests for WTO "process" compliance. Given the serious and growing nature of the national security threat, regional impact and threat to rule of law, and heavy burden to US industries and workers, **this petition provides the evidence and rationale for immediately suspending the US-Israel Free Trade Area as allowed under Section 301. Suspension should continue until such time as Israel's legal and regulatory systems are developed enough to engage in legitimate, rules based bilateral trade with the United States. Given the long term and highly damaging history of IP violations, an in-depth damage assessment should be performed in order to negotiate appropriate Israeli compensation for affected US industries and workers.**

1. Introduction

This petition is presented by the Institute for Research Middle Eastern Policy pursuant to Section 302(a) of the Trade Act of 1974, as amended (19 U.S.C. §§ 2412 et seq.) ("the Trade Act"), and the regulations of the Office of the United States Trade Representative ("USTR") at 15 C.F.R. Part 2006 (Procedures for filing Petitions for Action under Section 301 of the Trade Act of 1974 as Amended). This petition requests that action be taken under Section 301 (a) to end preferential access to the US market under treaty with the Government of Israel in order to reverse a string of Paris Convention for the Protection of Industrial Property and TRIPs violations that commenced within the process of negotiating the US-Israel Free Trade Area in 1984.

a. The Petitioner

The Institute for Research Middle Eastern Policy (IRmep) is a tax-exempt nonprofit organization headquartered in Washington, DC. IRmep's mission is to improve US-Middle East policy formulation through warranted enforcement of applicable laws. IRmep is supported by American citizens, chambers of commerce, businesses and foundations residing in 37 states.

b. Statutory Basis for This Petition

The core foundation for expanded and productive trade is the protection of IP. This was encapsulated in the July 21, 1969 Paris Convention for the Protection of Industrial Property. Signatory countries including the United States and Israel pledged to avoid "breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition."

It was subsequently expanded in the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) ratified by members the United States and Israel. The Uruguay Round of the General Agreement on Tariffs and Trade (GATT) negotiated TRIPs in 1994. TRIPS is an international agreement administered by the World Trade Organization (WTO). It is binding on the US and Israel. TRIPS establishes even more highly defined regulations and standards for many varieties of intellectual property (IP) than the Paris Convention.

Under TRIPS, trading nation laws must meet strict requirements covering copyrights, industrial designs; patents; monopolies for the developers of new plant varieties; trademarks; as well as undisclosed or confidential information. TRIPS also establishes enforcement procedures, remedies, and dispute resolution procedure.

TRIPS Section 7: Article 39 Protection of Undisclosed Information

SECTION 7: PROTECTION OF UNDISCLOSED INFORMATION

Article 39

1. In the course of ensuring effective protection against unfair competition as provided in Article 10*bis* of the Paris Convention (1967)[1], Members shall protect undisclosed information in accordance with paragraph 2 and data submitted to governments or governmental agencies in accordance with paragraph 3.

2. Natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to, acquired by, or used by others without their consent in a manner contrary to honest commercial practices[2] so long as such information:

(a) is secret in the sense that it is not, as a body or in the precise configuration and assembly of its components, generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question;

(b) has commercial value because it is secret; and

(c) has been subject to reasonable steps under the circumstances, by the person lawfully in control of the information, to keep it secret.

3. Members, when requiring, as a condition of approving the marketing of pharmaceutical or of agricultural chemical products which utilize new chemical entities, the submission of undisclosed test or other data, the origination of which involves a considerable effort, shall protect such data against unfair commercial use. In addition, Members shall protect such data against disclosure, except where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.

As signatories to the 1969 Paris Convention for the Protection of Industrial Property and later TRIPs, the US and Israel are compelled to protect American business and worker interests by upholding IP rights. Again, both have repeatedly failed to do so, beginning within the very process of negotiating the United States' first bilateral trade agreement.

c. Petitioner's Economic Interest

The petitioner's primary economic interest is reversing the negative jobs impact that serial IP violations have had on American industry, workers, and IRmep's supporters. We seek to empower and give redress to a silent majority of American stakeholders victimized by the negative economic impact of ongoing IP violations inherent in the US-Israel FTA and abetted by special interest lobbies. The petitioner's secondary interest is reversing systemic enforcement malaise at the USTR and subversion of warranted trade law enforcement that has encouraged and emboldened Israeli commercial espionage within the United States.

---

1 According to the World Intellectual Property Organization Israel ratified the Paris Convention for the Protection of Industrial Property on July 21, 1969: http://www.wipo.int/edocs/notdocs/en/paris/treaty_paris_9.html

2 For the purpose of this provision, "a manner contrary to honest commercial practices" shall mean at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition.

2. Complaint #1: Member State Agencies (USTR and ITC), the American Israel Public Affairs Committee and the Israeli Government Violated the IP Rights of US industries, Associations and Workers during the 1984 Treaty Negotiations.

On January 1, 1984 USTR William E. Brock requested that the International Trade Commission "conduct an investigation pursuant to section 332(g) of the Tariff Act of 1930, and to advise the President, with respect to each item in the Tariff Schedules of the United States as to the probable economic effect of providing duty free treatment for imports from Israel on industries in the United States producing like or directly competitive articles and on consumers."[3]

On February 15, 1984 public notice was duly published in the Federal Register[4] soliciting industry input for a report to be completed by May 30, 1984. The notice announced public hearings scheduled for April 10-11, 1984 with the deadline for requests for appearances set no later than noon, April 3, 1984.

The ITC also solicited written submissions: "in lieu of or in addition to appearances at the public hearing, interested persons are invited to submit written statements concerning the investigation...by the close of business on April 3, 1984." The International Trade Commission underscored its commitment to properly handle trade secrets and protect IP submitted by industry groups. "Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked 'Confidential Business Information' at the top. All submissions requesting confidential treatment must conform with the requirements of 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submission, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, D.C."[5]

During the period for public comment individual experts, associations, and corporations provided feedback to the ITC. On April 10, 1984 public testimony was heard on behalf of the US Bromine Alliance, Arkansas Industrial Development Commission, the California Tomato Growers Association, Inc, University of California at Berkley, tri/Valley Growers, Hunt-Wesson Foods, the American Dehydrated Onion and Garlic Association, Sun Garden Packing Company, Western Growers Association, Monticello Canning Company, Inc, National Milk Producers Federation, California Olive Association, Florida Citrus producers, and Sunkist Growers, Inc.

A delegation from Arkansas lead by then Governor Bill Clinton was concerned that the state's vital bromine industry not be negatively affected by any proposed treaty "So I would just plead with you to consider the enormously concentrated adverse economic impact of including bromine in this FTA, because 85 percent of the production is concentrated in two small rural counties..."

US Senator Dale Bumpers testified as well: ".. all of us are concerned about the potentially serious consequences that an FTA could have upon the United States bromine industry, a small but vital sector of the American economy..."

"The Israeli bromine industry enjoys a series of subsidies and other special advantages...To begin with, the Israeli bromine industry is government-owned."

On April 11, public testimony was heard on behalf of the American Israel Commerce and Industry Association and the American Israel Public Affairs Committee. Thomas A. Dine, then Executive Director of the American

3 Letter from William E. Brock, USTR to Alfred Eckes, Chairman of the ITC, 1/31/1984, ITC Public File

4 Federal Register Vol. 49, No. 32/ Notices

5 Federal Register Vol. 49, No. 32/ Notices

Israel Public Affairs Committee (AIPAC) testified on the alleged mutual benefits of the agreement and against any special exemptions by economic sector: …"because of Israel's small size and limited production capacity relative to the U.S., there is little reason to fear major short term negative effects from increased Israeli imports into the U.S….The proposed Free Trade Area is therefore a two-way gain—both countries will reap the benefits from the pact..." The AIPAC executive also argued for"...keeping the proposed FTA as 'clean' as possible and avoid gutting the agreement by carving out exception after exception." [6] AIPAC's formal testimony (see appendix) for the agreement did not reveal its subsequent violation of US IP, or how ongoing IP violations would adversely impact the trade relationship.

Potential IP violation issues were already expressed by concerned US companies. On May 2, 1984 Monsanto International voiced concerns about IP rights based on previous business experience in Israel, "..a local concern has been able to take advantage of the procedural shortcomings in the Israeli "patent opposition system," the granting of a patent to Monsanto has been blocked." Israel's heavy state involvement in the economy was also raised as a concern: "Three fourths of Israel's chemical industry is owned by the government and it receives substantial export subsidies....In the decade ahead Israel will become an increasingly active exporter of these products and may cause some market discontinuities in the U.S..." Finally, echoing many other industry petitions Monsanto questioned the wisdom of bilateral trade with such a small, developing economy: "...our government should make the distinction between the advanced developing and developed countries with a strong current account position (such as Taiwan, Hong Kong and Japan) and those with severe balance of payments problems..."[7]

Monsanto was not the only US business interest predicting the potential IP risks associated Israeli trade. Nor was it the only to frankly take note that entering into a trade agreement with such a small and underdeveloped economy with severe balance of payments problems offered little in return to the United States.

But Monsanto's concerns about IP arrived after the comment filing deadline, and was ignored by the ITC. On May 30, 1984 Alfred Eckes, Chairman of the ITC transmitted the final 300 plus page report derived from both public and confidential business information titled *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180* to the office of President Ronald Reagan with a cover letter. "Based on the information gathered in the U.S. International Trade Commission's investigation of the proposed free trade area, the Commission does not expect duty-free treatment for U.S. imports from Israel to have a significant adverse effect at the aggregate level for any of the major sectors examined; however, at the less aggregated commodity level, significant adverse effects are likely in seven different product areas as discussed in the report."[8]

In spite of almost total US industry opposition to the proposed agreement, the process continued without incident until on August 30, 1984 the Washington Post (see appendix for full article) broke the news that the classified report had been obtained by the American Israel Public Affairs Committee:

> "The FBI is investigating how the major pro-Israel lobbying group obtained a copy of a classified document that spells out American negotiating strategy in trade talks with Israel, government officials said yesterday.
>
> The document, a report from the International Trade Commission to U.S. Trade Representative William E. Brock, contains proprietary data supplied by American industries and other sensitive information for the negotiations, which began early this year.
>
> Trade officials said the report would give Israel a significant advantage in the trade talks because it discloses how far the United States is willing to compromise on contested issues. Some of the proprietary information, moreover, could help Israeli businesses competing with U.S. companies, officials said.

6 Written Testimony of Thomas A. Dine, AIPC, before the ITC, 4/10/1984
7 Letter to Kenneth Mason, ITC from Thomas L. Gossage, Monsanto, 5/2/1984 ITC Public File
8 Letter to president Ronald Reagan from Alfred Eckes, ITC, 5/30/1984 ITC Public File

> A spokesman for the American Israel Public Affairs Committee (AIPAC), the principal pro-Israel lobbying group in this country, acknowledged that the organization had a copy of the report but said the lobbying group did nothing illegal."[9]

On November 1, 1984 Max Turnipseed, the spokesperson for the US Bromine Alliance accompanied by lawyers Will E. Leonard and Edward R. Easton from the law firm of Busby Rehm and Leonard P.C. met with ITC Chairwoman Paula Stern. They requested detailed confirmation about what, if any, confidential business information had been disclosed in the classified report.

> "The US Bromine Alliance provided very sensitive cost information to the Commission in response to the Commission's requests for confidential business data in connection with its report on a free trade agreement with Israel. The Alliance presumes that these data were quoted in the Commission's confidential report to the USTR, a copy of which was obtained by representatives of the American-Israel Public Affairs Committee..."[10]

After considerable internal consultation as to whether the ITC could publicly respond to queries about which classified data leaked, on November 29, 1984, ITC Chairwoman Paula Stern formally confirmed that all of the Bromine Alliance's business confidential data had been contained in the report:

> "You requested us to describe, characterize, or specify what business confidential information submitted by the U.S. Bromine Alliance in your letter of April 27, 1984 was included in the U.S. International Trade Commission's confidential report to the U.S. Trade Representative on investigation No. 332-180, Probable Effect of Providing Duty-Free Treatment for Imports from Israel...
>
> Specific business confidential numbers extracted from the Alliance's letter and shown in the report included: (1) the production cost for bromine, (2) production cost, raw material cost, depreciation or manufacturing cost, by-product cost, and shipping cost for the compound TBBPA and (3) the length of time that sales of domestic TBBPA could be supplied from inventory."[11]

Stern also confirmed that only 15 copies of the business confidential information were ever made and circulated within the ITC.

> "You may be assured that we place a high priority on safeguarding sensitive data and we are currently preparing detailed internal procedures."

Administrative files regarding what measure were taken to safeguard sensitive data or deploy damage control given the leak to AIPAC and the government of Israel are unavailable. Now in private practice, in January of 2009 Dr. Paula Stern speculated the leak may have originated at the USTR. [12]

In spite of the FBI investigation and ongoing US industry concerns over the IP leak, on January 7, 1985 the ITC Secretary formally terminated investigation 332-180.

> "The Commission provided USTR with such advice on May 30, 1984, as a result of investigation No. 332-180. At the request of USTR, that investigation was conducted in all respects as though the advice had been requested under section 131. A public hearing was held. Notice of the investigation and public hearing was published in the Federal Register of February 15, 1984..."[13]

The treaty took effect on September 1, 1985.

While the US-Israel Free Trade Area leaks violated the IP rights of US industry guaranteed by the Treaty of Paris (in force during negotiations) and TRIPS from 1996 onward, its impact on subsequent actions by AIPAC, the Israeli government and Israeli industry is only now becoming apparent. The record is clear that either ITC and/or the USTR (or both) failed to adequately protect the IP rights of US industry by failing to secure confidential business information contained in the report *Probable Economic Effect of Providing Duty Free*

9 "FBI Investigates Leak on Trade to Israel Lobby" Washington Post, 8/3/1984
10 Letter to Dr. Paula Stern, ITC from Max Turnipseed, US Bromine Alliance, 11/1/1984, ITC Public File
11 Letter to Max Turnipseed, US Bromine Alliance, from Dr. Paula Stern, ITC 11/29/1984, ITC Public File
12 Email to IRmep from Dr. Paula Stern, The Stern Group 1/10/2009
13 Kenneth R. Mason, ITC notice, 1/7/1985, ITC Public File

Treatment for U.S. Imports from Israel, Investigation No. 332-180. The American Israel Public Affairs Committee or AIPAC and the government of Israel also violated Treaty of Paris/Trips by obtaining and leveraging the confidential business information provided by corporations and associations most concerned about the FTA against their most closely held interests. Beginning in 1984 the Israeli government, industry and AIPAC could begin to act in concert on highly sensitive market and industry information unobtainable from any legitimate market research or data service provider. This insight touched off a string of IP violations and commercial espionage generating the negative consequences outlined in the following sections. By negotiating the US-Israel Free Trade Area armed with knowledge of IP illegally extracted from *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180* AIPAC and the Israeli government were able to embed violations of IP into the agreement and, in the case of Israel, into industrial policy. In this sense, the agreement and negotiating process were the catalyst for subsequent IP violations.

The report *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180* is still classified by the ITC and USTR. It is considered so highly sensitive that neither will release it under the Freedom of Information Act. (See appendix)[14]

14 Letter to the Institute for Research: Middle Eastern Policy denying "FOIA request for Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180 (redesignated TA-131(b)-10)" from Marilyn Abbot, ITC, 12/29/2009 – Letter from United States Trade Representative denying FOIA, 3/9/2009

3. Complaint #2: Israeli Manufacturers Violate US IP via Practice of Commercializing Military-Industrial Espionage

In the years after the US-Israel Free Trade Area was ratified, Israel engaged in systematic Treaty of Paris and TRIPs violations that allowed it to build on unfair trade advantages embedded in the FTA and also derived from capturing American IP without proper compensation to American rights holders for their sunk development costs, proper licensing, business process, or related royalties. US government agencies have repeatedly documented instances of such violations, some which generated severe adverse consequences for US national security in addition to losses to US industries.

In January of 1996 the Pentagon's US Defense Investigation Service (DOD/DIS) based in Syracuse, New York sent the following urgent three page memo about Israeli industrial espionage in the United States to 250 facilities and defense contractors conducting sensitive American military projects:[15]

1996 US Defense Investigation Service Memo on Israeli Commercial Espionage

COUNTRY: ISRAEL

KEY JUDGMENTS:

* Israeli espionage intentions and capabilities are determined by their traditional desire for self reliance.

*Israel aggressively collects military and industrial technology. The United State is a high priority collection target.

* Israel possesses the resources and technical capability to successfully achieve its collection objectives.

BACKGROUND:

Non-traditional Adversary

Israel is a political and military ally of the United States. However, the nature of espionage relations between the two governments is competitive. The Israelis are motivated by strong survival instincts which dictate every facet of their political and economic policies. This results in a highly independent approach determining those policies which they consider to be in their best interests. Consequently, the Israelis have established an intelligence service capable of targeting military and economic targets with equal facility. The strong ethnic ties to Israel present in the United States coupled with aggressive and extremely competent intelligence personnel has resulted in a very productive collection effort. Published reports have identified the collection of scientific intelligence in the United States and other developed countries as a the third highest priority of Israeli Intelligence after information on its Arab neighbors and information on secret US policies or decisions relating to Israel.

The primary Israeli collection agencies are the Mossad, equivalent to the CIA, Aman the Israeli Military Intelligence branch and a little known agency identified as the Lakam which translates to the Science and Liaison Bureau. It has been reported that the Lakam was disbanded after it was identified as the agency responsible for recruiting and running Jonathan Pollard. However, there is no doubt that the Israeli intelligence community has adjusted its collection efforts and continues to closely target the scientific and industrial community within the United States.

15 DEFENSE MEMO WARNED OF ISRAELI SPYING ETHNIC TIES' By R. Jeffrey Smith Washington Post, 1/30/1996

John Davitt, formerly the head of the Justice Department's Internal Security Section, was quote as stating the Israeli intelligence services were "more active than anyone but the KGB….They were targeted on the United States about half the time and on Arab countries about half the time."

METHOD OF OPERATION/TECHNIQUES:

The Israeli Intelligence Service employs traditional collection tools. It has a trained agent cadre well versed in espionage tradecraft. Collection requirements are identified by the national leadership based on factors relating to defense and the national economy. The most compelling requirement deals with immediate threats to the existence of Israel posed by its geographic neighbors. Therefore, collection information relating to the existence of nuclear, chemical and biological weapons are the first order of priority. Israeli personnel are always seeking to recruit knowledgeable human sources with access to this information. Recruitment techniques include ethnic targeting, financial aggrandizement, and identification and exploitation of individual frailties. Selective employment opportunities (placing Israeli nationals in key industries) is a technique utilized with great success.

DOCUMENTED INCIDENTS:

a) The most highly publicized incident involving Israeli espionage directed against the United States is the 1985 arrest of Navy Intelligence analyst Jonathan Pollard. Pollard conveyed vast quantities of classified information to Israel for ideological reasons and personal financial gain.

b) In 1986, Israeli agents stole proprietary information from Chicago-based Recon Optical, Inc., an Illinois optics firm. Significant financial damages were incurred by Recon an in 1993, the Israelis agreed to pay three million dollars in damages.

c) In the mid-eighties, a large DoD contractor hosting Israeli visitors experienced the loss of test equipment during field testing relating to the manufacture of a radar system. Two years later, a request was received from Israel to repair the piece of missing equipment.

d) In 1994, a small firm utilizing a proprietary PC-based product to upgrade Israeli radar systems sent an engineer to Israel with its product. Upon arrival, the PC-based equipment was malfunctioning. Examination by the engineer traveling to Israel revealed the proprietary chip had been tampered with.

e) Israel is suspected of furnishing the People's Republic of China with US export-controlled technology desired by the Chinese to upgrade their indigenous capability to develop a fighter aircraft.

f) Author Peter Schweizer maintains Israeli Air Force personnel have repeatedly gained access to top secret military research projects by paying off Pentagon employees.

INFORMATION DESIRED:

The Israelis have a voracious appetite for information on intentions and capabilities relating to proliferation

topics, i.e. nuclear, chemical and biological weapons. Specific types of technology desired includes avionics equipment, spy satellite data, theater missile defense information. Israel had developed an arms industry which produces weapons platforms for each branch of its military service, information relating to the technologies relating to these platforms is actively sought. Israeli industry manufactures the Merkava Mark III battle tank, the Sa'ar class corvette missile boat and the Kfir jet fighter. United States firms engaged in research, development, and manufacturing associated with these technologies together with radar and missile defense technologies are high priority collection targets.

According to an April 1996 report from the Interagency Operations Security Support Staff (http://www.ioss.gov) titled *Operations Security Intelligence Threat Handbook:*

> "Israel has an active program to gather proprietary information within the United States. These collection activities are primarily directed at obtaining information on military systems, and advanced computing applications that can be used in Israel's sizable armaments industry. Two primary activities have conducted espionage activities within the United States: the Central Institute for Intelligence and Special Activities (MOSSAD) and the Scientific Affairs Liaison Bureau of the Defense Ministry (LAKAM). The Israelis use classic HUMINT techniques, SIGINT, and computer intrusion to gain economic and proprietary information."

The office of the USTR, while empowered to respond to organized Israeli commercial espionage through strong TRIPs remedies, has never taken effective retaliatory action. Although laws protecting against US IP theft were already on the books, Congress was compelled to pass the Economic Espionage Act in 1996 making theft or misappropriation of a US trade secret a federal crime.

The first section of the law allows prosecution for misappropriation of trade secrets and the subsequent acquisition of such misappropriated trade secrets with the knowledge or intent that the theft will benefit a foreign power. This statute covers precisely the type of activity involved in the ITC/AIPAC/Israeli Government misappropriation of confidential US business information in 1984. The second section of the law criminalizes the misappropriation of trade secrets related to or included in a product that is produced for or placed into interstate (including international) commerce, with the knowledge or intent the action will injure the owner of the trade secret. Penalties for violation of section 1832 are imprisonment for up to 10 years for individuals and fines of up to US $5 million for organizations.

However, like TRIPS remediation measures, the Economic Espionage Act is rarely productively deployed. Because of this, economic intelligence collection activities that violate US corporate IP rights have continued, while also shifting offshore. Many violations are so far out of the reach of the US criminal justice system, since they are perpetrated by Israeli manufacturers in collusion with the Israeli government, **that the USTR is the single most effective avenue for warranted enforcement.** Only a limited number of US countermeasures and criminal prosecutions have attempted to stem IP leaks, giving priority to those that most threaten national security. Some measures are preventative in nature.

In 2006 an administrative judge at the Pentagon defended harsh new denials of security clearances for Americans with family in Israel over high potential blackmail risk, "The Israeli government is actively engaged in military and industrial espionage in the United States. An Israeli citizen working in the US who has access to proprietary information is likely to be a target of such espionage.[16]" While this sort of broad brush treatment is lamentable, detailed information about the IP thefts behind the new policy are legion.

From the commercial standpoint, Israeli manufacturers have serially violated US IP by copying and selling patented American technology. Aside from the violations of the Paris Convention for the Protection of Industrial Property and TRIPs that create largely unquantifiable revenue and jobs loss, unauthorized Israeli reexport of sensitive US defense technology seriously undermines US national security. Israel IP violations have altered the strategic military balance between the US and China by leaking sensitive data on the Patriot anti-ballistic missile defense system to China. Tactically, US Marines have had to face on the battlefield US optical technology illicitly provided by Israel and mounted on Iraqi tanks.

16 Washington Times, June 27, 2006

US Defense Industry and Israeli Trips Violations[17]

US Weapon/IP	Israeli TRIPs Violation	Outcome
HAVE-NAP missile system	POPEYE	By reverse engineering the Martin-Marietta HAVE-NAP an Israeli manufacturer avoided millions in development costs as well as warranted license fee payments. Israeli sales staff admit "95 per cent of the Popeye is US technology."
US developed cruise missile technology.	STAR Cruise Missile	The CIA found Israel to be marketing the STAR, which incorporates sensitive US technology, to China.
Sidewinder air-to-air missile	Python-3, Shafrir-2	Israeli versions of the sidewinder were sold to South Africa, Chile, Thailand and China. China then developed and sold its version of the Israeli copy (PL-8) to Iraq.
TOW-2 anti-tank missile	Mapatz	Israel's unauthorized copies of the Hughes Aircraft company's TOW-2 missile have been sold to apartheid South Africa, Venezuela and China.
Patriot Antimissile System	Israel leaked technical information on the system to China in exchange for sensitive IP.	Former defense secretary Dick Cheney concluded that Israel had leaked IP about the Patriot to China in exchange for information on China's M-9 and M-11 ballistic missiles. The leak would enable Chinese modification of the M-9 and M-11 ballistic missiles to avoid intercept by US systems.
Patented US thermal imaging technologies	Israeli and Dutch firm Delft integrate US IP into tank sights sold to countries including China.	China installed Israeli tank sights on MOD-2 tanks, then sold 69 to Iraq. U.S. Marines faced and captured some of the tanks, seizing evidence of the illegal IP transfer during the first Gulf war.

Israel's unauthorized acquisition, integration and re-transfer of US military equipment outside of US arms control regimes has been documented by numerous US government agencies. The total financial loss of revenue and sunk development costs are significant. The national security threat is also material since the transfers directly and indirectly provide the latest technology to countries that are off limits to US vendors because they are considered potentially hostile to the United States.

17 "Israel's Unauthorized Arms Transfers" Duncan Clarke, Foreign Policy Magazine, Summer 1995

4. Complaint #3: The Israeli Pharmaceutical Regulator and Industry Systemically Violate US IP

The American pharmaceutical industry has faced systematized violations of its IP rights through purposeful Israeli regulatory and manufacturing schemes designed to create and subsidize an export oriented generic drug industry. This is enabled by the Israeli government's legally mandated access to sensitive American drug company IP. Industry representatives have insisted that Israel remain on the USTR Priority Watch List for the past four years (2006-2009) precisely because the Israeli government's discriminatory practices strongly resemble the systemization of the treatment US industries received during the 1984 leak of confidential US IP during the FTA negotiations. However in the case of pharmaceuticals the consolidation point for sensitive American IP is an Israeli regulatory agency, the Ministry of Health. The IP abuse is now firmly embedded in Israeli patent law, purposeful regulatory delays and diminished legal venues for victims and rights holders to claw back damages.

The Israeli Ministry of Health solicits patented data and formulas under the auspices of granting approval of drugs for the Israeli domestic market. It then delays the approval process while data is reviewed by Israeli drug-makers, which then challenge the patents while seeking rushed commercialization of cutting edge US drug innovations world wide. Although obligated by TRIPs Article 39.3 to protect registration files (clinical dossiers) against unfair commercial use (known as data exclusivity), Israel enacted data exclusivity regulations in March of 2005 in such a way that American clinical dossiers have been converted into a vital data source that Israeli generic drug exporters rely on for manufacturing and accelerated exports of generic drugs based on US patents.

US pharmaceutical companies allege that Israeli IP laws have been purposely weakened and placed out of sync with major industrial countries that permit much longer time periods before market exclusivity given by patents expire. Other regulators don't count the regulatory approval process time period against patent term expiration as Israel does. The Chairman of the Knesset's Constitution, Law and Justice Committee confirmed during consideration of the Patent Term Extension Legislation, that cutting the patent term was a protectionist measure to boost generic exports saying, “We have a local industry that we want to protect.”

The short periods left to recoup investments have left US pharmaceutical manufacturers at a major disadvantage to Israeli generic drug manufacturers such as Teva whose global sales are premised upon commercial data leaks and purposely weakened IP protection. Once again US consumers and taxpayers subsidize research and development that Israeli generic drug manufacturers monetize. One industry group observed that:

> Under Israeli law, patents are thoroughly examined by technically competent examiners. It normally takes four to six years until the examination is completed. The duration of a patent is twenty years from the date of filing the application. As a result of the examination, the patentee “loses” a significant part of the period of exclusivity to which it is entitled. After examination and acceptance of the application, it is published for possible oppositions in the Patent Gazette. One would have assumed that, once the examiner deems that the invention is worthy of patent protection and accepts the application, the patent will finally be granted. However, under Article 30 of the Israeli Patents Act,any competitor may block patent grant simply by filing an opposition to the patent application.
>
> The resolution of the opposition may take many more years so that the patentee is actually deprived of the remainder of the period of exclusivity to which it is entitled. During the opposition proceedings the patent is not registered and not yet valid. The legal situation in Israel is diametrically opposed to the legal situation worldwide. In most (if not all) OECD countries, any opposition proceedings are conducted post registration (e.g., in the EPO) and it is not possible to block the registration of the patent. The deeply flawed pre-grant opposition system applicable under Israeli law has been rejected in the vast majority of developed countries, including in the EU and the United States. Third parties can be given an opportunity to challenge the validity of the patent, but as recognized elsewhere, any such action should be done post-grant. Indeed, the Patents Act already provides a system for post-grant challenge. Additionally, a potential infringer is also entitled to challenge validity in infringement proceedings. However, a system of pre-grant oppositions, which blocks patent grant for many

years, actually nullifies patent protection. Such a system has been rejected worldwide.[18]

American pharmaceutical companies and associations seeking redress in Israeli courts found that laws governing redress had been undermined by the Ministry of Justice enforcement policies:

> "The Ministry of Justice has recently revived a 2003 recommendation of the now disbanded Patent Advisory Committee to exclude the principle of unjust enrichment from litigation concerning IP issues. Since the unjust enrichment principle has been the only enforcement tool available to PhRMA member companies for use against generic infringers when faced with pre-grant opposition, the exclusion has been high on the wish list of Israeli generic manufacturers. Revival of a recommendation of an advisory committee, whose recommendations had not been accepted by the then Minister of Justice precisely because it had been demonstrated at the time that the Committee had been under the influence of the Israeli generic industry, is a cause of concern for PhRMA member companies, especially when coupled with enactment of the recent PTE and DE legislation and the continued maintenance of pre-grant patent opposition."[19]

A quantitative analysis of how Israel's pharmaceutical exports and imports have been propelled by IP violations over time is revealing. According to World Trade Organization data in 1990 Israel exported only $80 million in pharmaceuticals, importing $180 million with a category trade deficit of $100 million. By 2007 Israel was exporting $3.51 billion (74% destined for the United States) and importing only $1.11 billion, a net category surplus of $2.4 billion. US pharmaceutical innovations have now been detached from US rights holders by the Israeli legal regime and regulator, and monetized by "free riding" Israeli manufacturers, commercializing American IP in the US home market. Commercializing clinical dossiers under such circumstances is an unfair trade practice.

18 Page 140-141, PhRMA "Special 301" Submission, 2005
19 Page 141, PhRMA "Special 301" Submission, 2005

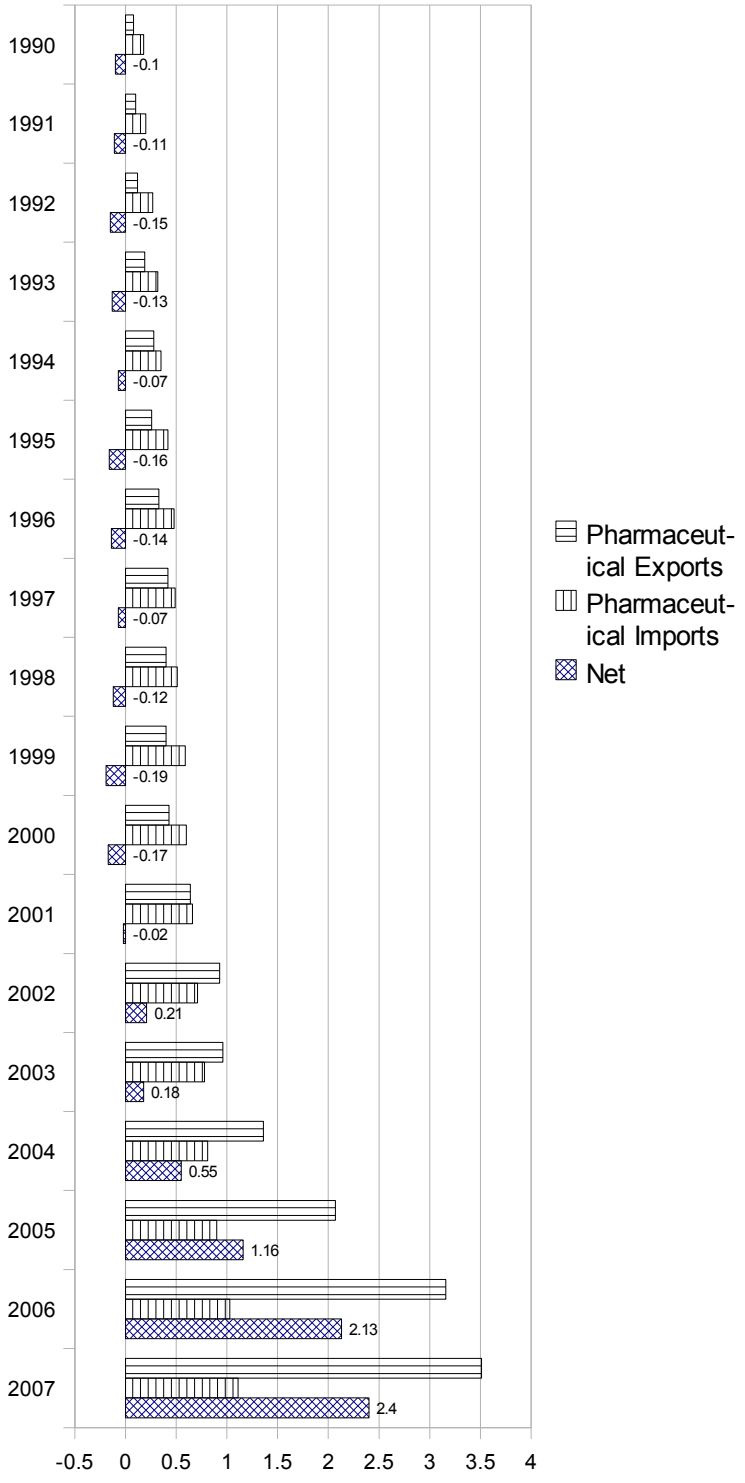

Illustration 1: Israeli Pharmaceutical Exports, Imports, and Net Revenue (US $ Billion) Source: WTO

USTR's 2005 Special 301 annual report connects the protection of IP rights and financial incentives at the core of pharmaceutical innovation:

> "The United States is firmly of the conviction that intellectual property protection, including for pharmaceutical patents, is critical to the long term viability of a health care system capable of developing new and innovative lifesaving medicines. Intellectual property rights are necessary to encourage rapid innovation, development, and commercialization of effective and safe drug therapies. Financial incentives are needed to develop new medications; no one benefits if research on such products is discouraged."
>
> Israel's intellectual property protection deteriorated over the last year. The recently-enacted patent term extension (PTE) and data exclusivity (DE) legislation, taken together with Israel's continued pre-grant opposition and its attempts to exclude intellectual property infringement from the scope of its unjust enrichment doctrine, guarantees that Israeli generic producers will be free to manufacture in Israel for export, primarily to the United States."

However the USTR hasn't effectively acted upon pharmaceuticals as a component of the the broader IP violations inherent in the US-Israel FTA nor has it obtained any results against endemic Israeli pharmaceutical violations quantifiable in import/export statistics.

For its part, the Israeli government has been largely unapologetic to American industries and workers. In March of 2008, in response to the USTR's third sequential placement of Israel on the "Priority Watch List" the Ministry of Foreign Affairs issued the following statement:

> "The Government of Israel maintains that its intellectual property law regime, including acquisition, maintenance and enforcement of intellectual property rights, is modern, effective and exceeds uniform minimum standards set forth in multilateral treaties regulating large aspects of intellectual property standards. Intellectual property law provides for monopolies limited in time and scope with respect to, inter alia, inventions, trademarks, and works of copyright, such as computer software, films and recorded music. ...Despite Israel's 2007 ranking on the watch lists, no claim has ever been commenced against Israel by USTR alleging failure to maintain a treaty obligation, and it is the position of the Government of Israel that its intellectual property regime fully conforms to its treaty obligations. Accordingly, maintaining Israel on any of the watch lists is unjustified."[20]

Israel's failure to effectively act upon known, documented and ongoing IP violations, combined with its hardening stance against the rights of US producers indicate that little progress will likely result from "positive dialogue," promised "preparatory" work to change regulations, and out-of-cycle reviews which make no attempt to obtain damages for past misappropriation of US IP. Real sanctions are clearly long overdue.

20 "Israel's intellectual property law" Israel Ministry of Foreign Relations, March 16, 2008 http://www.mfa.gov.il/MFA/Government/Law/Legal+Issues+and+Rulings/Israel%20intellectual%20property%20law%2016-Mar-2008

5. Complaint #4: Israeli Diamond Exports to the US Finance Overseas Crime, Instability and Diminish US Market Access

Preferential access to the immense US market has facilitated acts against both US and international law as well as US regional policy objectives. One US import from Israel, gem diamonds, is financing the construction of illegal Israeli colonies in occupied West Bank territory. Indeed, the revenue from such "settlement diamonds" threatens to destabilize the Middle East by radicalizing and rallying opposition to the United States.

Tariff free access to the US market has massively increased the import of pearls, precious stones and metals from Israel on average 13% annually between 1989 and 2007, growing from $1.5 billion to $9.8 billion per year. Israel now supplies half of total US import category demand ($19 billion) for such precious objects. In January, 2009 the Israel Diamond Controller's office of the Ministry of Industry, Trade and Labor reported total 2008 diamond exports reached $6.2 billion in 2008, with LLD Diamonds Ltd. Owned by Israeli-American Lev Leviev topping the list of exporters at $417 million.[21]

Leviev constructs Israeli settlements in the occupied West Bank through Danya Cebus company, a subsidiary of the company Africa-Israel which subcontracted the construction of Mattityahu East to Shaya Boymelgreen settlements. Danya Cebus is also constructing part of Har Homa and Maale Adumim, which bisect the West Bank and weaken the US objective of the creation of a viable Palestinian state. In 1999 Danya Cebus announced plans to build new homes in the settlement of Ariel and through the subsidiary corporation LIDAR. Leviev also appears to be the sole realtor/developer of the settlement of Zufim. UNICEF has advised Leviev that it will no longer partner with him or accept any contributions because of this ongoing illegal activity.[22] (See Appendix)

While it is unlawful for any US person under USC Title 18 Part 1 Chapter 45 to knowingly begin "any military or naval expedition or enterprise to be carried on from thence against the territory or dominion of any foreign prince or state, or of any colony, district, or people with whom the United States is at peace" Leviev settlement financing from US diamond sales also violate longstanding policy and the more recent "roadmap for peace" which called for a freeze on Israeli settlement activity. Settlement building with funds generated from preferential access to the US market under the US-Israel FTA inflames also turns the much larger Arab import market valued at $609[23] billion in 2008 against[24] US products and services contrary to the general principles in the Section 301 preamble against restricting commerce:

> "Section 301 of the Trade Act of 1974, as amended (19 U.S.C. § 2411), is the principal statutory authority under which the United States may impose trade sanctions against foreign countries that maintain acts, policies and practices that violate, or deny U.S. rights or benefits under, trade agreements, or are unjustifiable, unreasonable or discriminatory and burden or restrict U.S. Commerce."

Leviev's access to the US market to finance illegal and destabilizing activities burden the reputation and penalize the sales of US industries doing business in other parts of the Middle East and Muslim world.

21 Diamond World News Service, January 22, 2009 http://www.diamondworld.net/contentview.aspx?item=3472

22 Letter, Office of the Executive Director, United Nations Childrens Fund, June 19, 2008

23 The CIA World Factbook total imports for the 22 Arab League countries

24 Dividends of Fear: America's $98 Billion Arab Market Export Loss, Washington Report on Middle East Affairs, July August 2003.

6. Complaint #5 AIPAC Trafficking Business Confidential and Classified Information to Israel is an Unfair Trade Practice

The American Israel Public Affairs Committee (AIPAC) was found by the FBI to be in possession of the classified *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180 (redesignated TA-131(b)-10)* while working with the Israeli government to pass the FTA. This was not an isolated incident in AIPAC's history. In fact, AIPAC has been an ongoing target for law enforcement affecting not only the IP of American business trade secrets but also for trafficking US national security information. In 2004 the news media reported on an FBI operation begun in 1999 into the Israeli government, AIPAC and Pentagon intelligence analyst Lawrence Franklin. Franklin met with Israeli Embassy intelligence officer Naor Gilon as well as two AIPAC executives, director Steve Rosen and chief analyst Keith Weissman and allegedly passed classified National Defense Information to persons not authorized to receive it. Franklin pled guilty in October 2005 to revealing classified information and has been sentenced to 12 years in prison. Prosecutors intended to prove that Col. Franklin passed classified information relating to Iran to both AIPAC employees, who then provided the classified information to the Israeli Embassy and allies sympathetic to a hard line military approach to Iran in the news media. But on May 1, 2009 the US government dropped its case against Rosen and Weissman after a series of pretrial rulings raised the standards for conviction far beyond a strict interpretation of the Espionage Act. The government's dismissalwas not an exoneration of AIPAC's lobbyists but rather damage control to limit the possibility that further classified information would be revealed at trial in the face of onerous burden of proof requirements (see appendix for full motion to dismiss):

> "The Attorney General's Guidelines for Prosecutions Involving Classified Information require, inter alia, that the government consider the likelihood that classified information will be revealed at trial, any damage to the national security that might result from a disclosure of classified information, and the likelihood that the government would prevail at trial. These considerations are not static; they require assessment and reassessment by the government throughout the pendency of a case.
>
> The landscape of this case has changed significantly since it was first brought. The pleadings filed in this Court and in the Court of Appeals for the Fourth Circuit document the Government's disagreement with some of the legal rulings in this case. In addition too adjusting to the requirement of meeting an unexpectedly higher evidentiary threshold in order to prevail at trial,the Government must also assess the nature, quality and quantity of evidence-including information relevant to prosecution and defense theories expected at trial.. In the proper discharge of our duties and obligations, we have re-evaluated the case based on the present context and circumstances, and determined that it is in the public interest to dismiss the pending superseding indictment."

On March 1, 2009 before the dismissal, Rosen sued AIPAC for defamation, charging that it singled him out for punishment over soliciting, obtaining and circulating classified intelligence information in the 2005 espionage affair. Rosen asserts in his civil lawsuit that such behavior, including handling classified intelligence, continues to be commonplace at AIPAC (See appendix for full civil complaint).

> "To control the flow of such information, government agencies in the field of foreign policy have designated individuals with the authority to determine and differentiate which information disclosures would be harmful to the United States, and which disclosures would benefit the United States through the work of their agencies and would not be harmful to the United States. To maintain liaison with the authorized agency officials who at times are willing to provide such information, organizations like AIPAC have designated officials of their own who have the requisite expertise and relationships to deal with government foreign policy agencies. At AIPAC, Steve Rosen was one of the principal officials who, along with Executive Director Howard Kohr and a few other individuals, were expected to maintain relationships with such agencies, receive such information, and share it with AIPAC board of directors and its senior Staff for possible further distribution. AIPAC, and those defendants who were AIPAC officials and/or members of its board of directors, knew that Mr. Rosen and others at AIPAC were receiving such information and expected that they would share it with them." [25]

25 Steven J. Rosen v AIPAC, et. al., Superior Court of the District of Columbia, Page 8

> "Further, on June 17, 2005, the Jewish Telegraphic Agency reported a different formulation to defame Steve Rosen: 'No current employee knew that classified information was obtained from Larry Franklin or was involved in dissemination of such information,' spokesperson Patrick Dorton said. In fact, Mr. Kohr had been told in writing that information obtained from Mr. Franklin originated from 'intelligence' sources, and Mr. Rosen knew no more about the sources or classification than Mr. Kohr."[26]

AIPAC's documented and ongoing trafficking in IP and national security information on behalf of Israel, though largely unpunished, represents an unfair trade practice against American industries. AIPAC's close coordination with the government of Israel has been ongoing since its inception and led to numerous early run-ins with US law enforcement. Isaiah L. Kenen, the founder of AIPAC, was formerly a registered foreign agent for the Israeli Ministry of Foreign Affairs.[27] Although ordered by the DOJ to continue registering under the Foreign Agents Registration Act after he formally left Israeli government service, [28] Kenen instead began lobbying for Israel at the American Zionist Council or AZC. The AZC was shut down after Attorney General Robert F. Kennedy ordered to register as an Israeli foreign agent on November 21, 1962.[29] A lengthy battle ensured with the US Department of Justice over its failure to register while both receiving millions in funding and coordination from the Israeli government.[30] Kenen left the AZC to lead and lobby for AIPAC until 1975. AIPAC currently maintains an office in Jerusalem[31] but has never registered as a foreign agent.

While there is no innocent explanation for how both AIPAC and the Israeli government continually come into possession of highly sensitive US industrial and national defense information, it is possible to quantify and assess one key aspect of the resulting damage.

7. Damage Assessment: American Jobs Loss

The exploding US trade deficit with Israel is an anomaly among bilateral free trade agreements. It might even be inexplicable absent the history of IP violations that facilitate and explain its explosive growth. In a time of economic downturn, blatant and ongoing violations of rules based trade threaten the economic viability of the American worker and US businesses while signaling to other trade partners that IP violations may not be punished by the United States. Although the total loss to American businesses from stolen defense and pharmaceutical IP is largely unquantifiable, precise jobs loss figures can be calculated using open source data from the Census Bureau's International Trade Statistics division. Jobs creation (losses) can be calculated via standard input-output tables. According to the US Census Bureau's last survey of export manufacturing establishments published in 2006, total direct export related jobs numbered 5,070,900. Total US manufactures exports during that year totaled $818 billion. Dividing export revenue by jobs yields one direct export related job supported by every $161,300 in export revenue in 2003. International Commercial Diplomacy Inc., a consultancy, estimates that two additional indirect jobs[32] are supported by each direct export manufacturing job. By factoring in yearly worker productivity gains from the Bureau of Labor Statistics (each worker produces more export revenue as manufacturing productivity rises) by 2008, the estimated revenue required to sustain one direct export related manufacturing job and two indirect jobs grew to $187,000.

Shortly after its inception, the US-Israel FTA reversed a formerly balanced trading relationship and produced an ever widening trade deficit to the United States. Translated into American jobs by the input-output method, the US-Israel FTA has been highly negative for American workers. In 2008, the $7.8 billion US deficit with Israel was equivalent to 125,663 American jobs.

---

26 Steven J. Rosen v AIPAC, et. al., Superior Court of the District of Columbia, Page 16

27 Foreign Agent Registration Act form, Israel Information Office http://www.irmep.org/ILA/Kenen/IOI/IOIreg/Registration/default.asp

28 DOJ order to Isaiah L. Kenen http://www.irmep.org/ILA/Kenen/FARA/01kenenlenvin.htm

29 http://www.irmep.org/ila/azcdoj/P6100127redorder/default.asp

30 See the book "America's Defense Line: The Justice Department's Battle to Register the Israel Lobby as Agents of a Foreign Government"and http://www.irmep.org/ila/azcdoj/

31 http://www.aipac.org/about_AIPAC/3435_4966.asp

32 "Using Data in Commercial Diplomacy", International Commercial Diplomacy, Inc.

American Jobs Loss to Israeli IP Violations 1999-2008

Year	Nominal US Trade Deficit with Israel ($Billion)	Revenue per Direct Manufacturing Job	Manufacturing Labor Productivity Gain	Direct Jobs	Indirect Jobs	Total American Jobs Loss
1999	-$2.2	$132,500	6.40%	-16,604	-33,208	-49,811
2000	-$5.2	$141,500	7.10%	-36,749	-73,498	-110,247
2001	-$4.5	$152,400	1.10%	-29,547	-59,094	-88,641
2002	-$5.4	$154,000	4.50%	-35,065	-70,130	-105,195
2003	-$5.9	$161,300[33]		-36,578	-73,156	-109,733
2004	-$5.3	$169,700	5.20%	-31,232	-62,463	-93,695
2005	-$7.2	$178,200	5.00%	-40,404	-80,808	-121,212
2006	-$8.2	$185,300	4.00%	-44,253	-88,505	-132,758
2007	-$7.8	$192,200	3.70%	-40,583	-81,165	-121,748
2008	-$8.0	$187,000	-2.70%	-41,888	-83,775	-125,663

This is in contrast to all other bilateral FTA results. In 2008 active[34] bilateral FTAs produced a cumulative $21.6 billion surplus. If the deficit generated by the US-Israel FTA (-$7.8 billion) were eliminated, the bilateral FTA surplus would have been $29.4 billion, sustaining 471,850 FTA related direct and indirect jobs in the American economy.

8. Damage Assessment: Comparative Bilateral FTA Analysis

A core purpose of the 1984 US-Israel Free Trade Area, like most other trade agreements,is "mutual benefit" derived by cooperation:

> Determined to strengthen and develop the economic relations between them for their mutual benefit; The Government the United States of America and the Government of Israel, Desiring to promote mutual relations and further the historic friendship between them; Determined to strengthen and develop the economic relations between them for their mutual benefit; Recognizing that Israel's economy is still in a process of development, wishing to contribute to the harmonious development and expansion of world trade; Wishing to establish bilateral free trade between the two nations through the removal of trade barriers; Wishing to promote cooperation in areas which are of mutual interest; Have decided to conclude this Agreement.[35]

However, unlike every other US bilateral free trade agreement, the US-Israel FTA delivers most benefits only to one party—Israel—by constantly undermining the rights of American corporations and workers through serial IP violations. This anomaly is quantitatively revealed in a comparison of every other active US bilateral FTA against the US-Israel FTA. (Note, data is from the US Census Bureau "TradeStats Express")

33 Baseline derived from "Exports from Manufacturing Establishments" The US Census Bureau, 2006
34 As indicated on the USTR website on 12/31/2008
35 Preamble Agreement on the Establishment of a Free Trade Area between the Government of Israel and the Government of the United States of America

2005 US Australia FTA

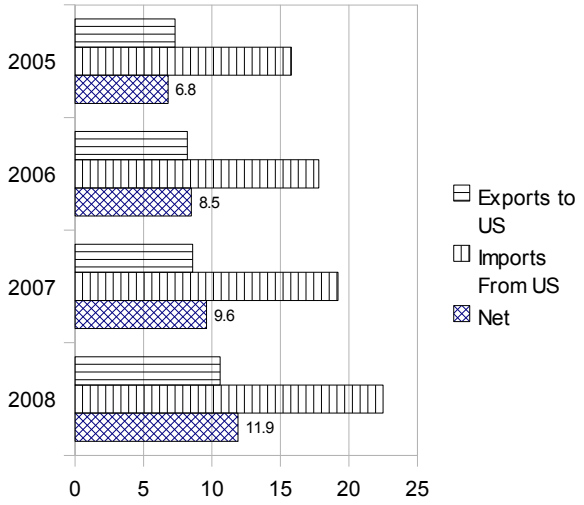

Illustration 2: US Australia FTA Performance

The US-Australia FTA has substantially improved US access to the Australian market while rectifying conflicts over that country's complex drug listing system. US exports of industrial machinery and passenger vehicles have expanded under the FTA, while Australian food and beverage exports have blossomed. The formerly stagnant bilateral trade relationship has experienced double digit growth averaging 12% since 2005, reaching $33 billion in 2008.

2006 US Bahrain FTA

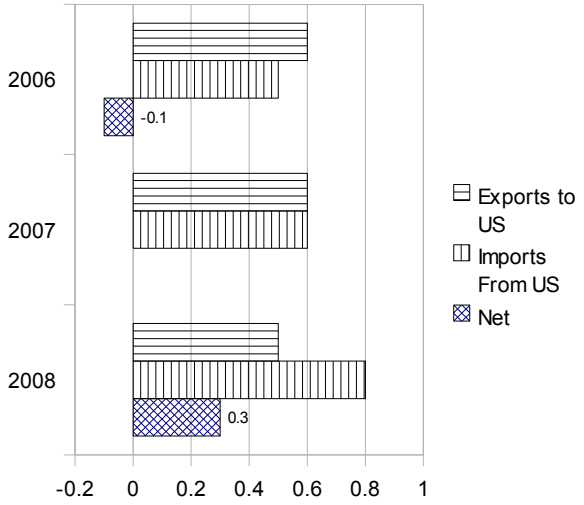

Illustration 3: US Bahrain FTA Performance

Though it is a small economy, Bahrain enjoys a strong competitive advantage in aluminum and fertilizer production. Exports of both have grown under the FTA while diversified US exports to Bahrain of aircraft, vehicles and machinery have boosted what has traditionally been a relatively minor trading relationship (Bilateral trade in 2008 amounted to $1.37 billion.)

2006 US Chile FTA

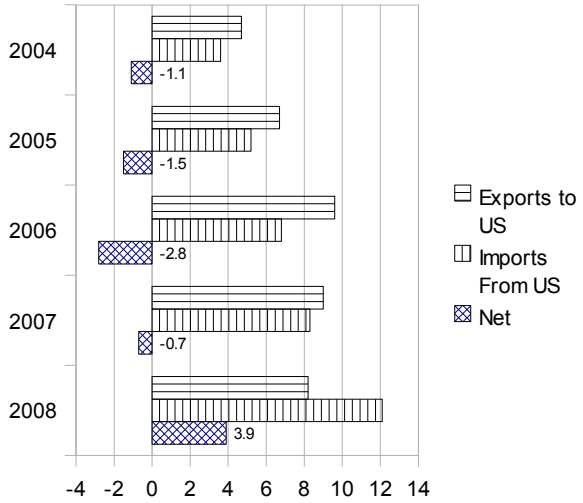

Illustration 4: US Chile FTA Performance

US Chile bilateral trade reached $16 billion in 2008. Copper, fruit and seafood dominate Chilean exports to the United States. US exports are concentrated in heavy machinery, fuel, passenger vehicles and aircraft. Over the past fifteen years, Chile and the US have held thin but temporary "surplus" positions in the relationship during alternating five to six year periods.

2006 US Jordan FTA

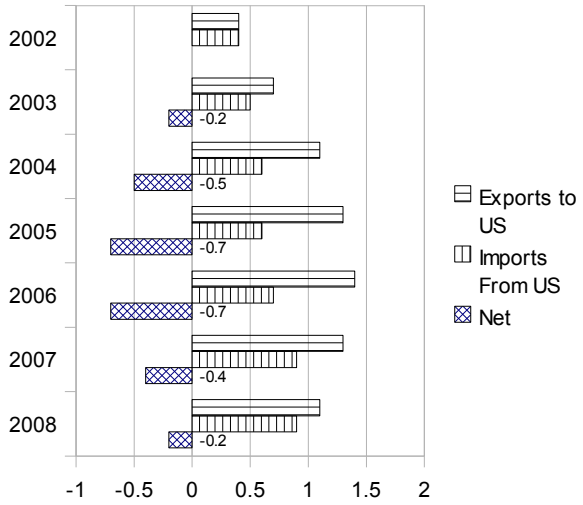

Illustration 5: US Jordan FTA Performance

Bilateral trade between the moribund Jordanian economy and the US reached only $2 billion in 2008. Implementation of the FTA has not produced the robust job opportunities sought by Jordanian workers or the Jordanian government. Rather Jordan's new sweatshop apparel industry has brought in temporary Bangladeshi workers to manufacture for export, bringing both criticism and condemnation from international human rights

organizations. Since implemented in 2006, the US deficit with Jordan has narrowed from $0.7 billion to $0.2 billion.

2006 US Morocco FTA

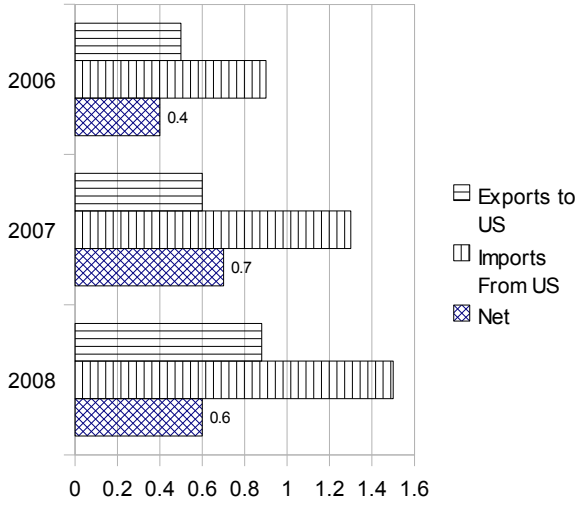

Illustration 6: US Morocco FTA Performance

Trade relations have been on a sound footing since Morocco became the first country to recognize the newly independent United States in 1777. Morocco exports raw materials used in cement, machinery, apparel and fuel to the US, receiving cereals, aircraft and other agricultural commodities in exchange. Bilateral trade has now reached $2.38 billion. The US has enjoyed a trade surplus with Morocco in all but one year since 1989.

2006 US Singapore FTA

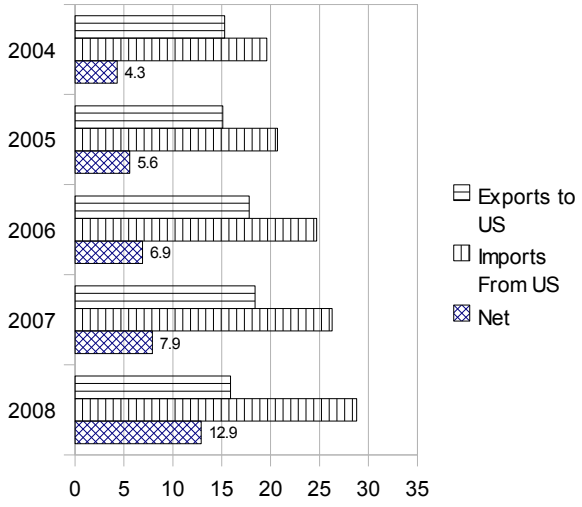

Illustration 7: US Singapore FTA Performance

Bilateral US Singapore trade reached $44.7 billion in 2008. Major US exports to Singapore include electronics, heavy machinery, aircraft components, optical and surgical instruments. Singapore exports include heavy machinery, electronics and pharmaceutical products. After a long period of deficits with Singapore, the US has gained a growing surplus since the year 2001, but neither holds any artificial or systemic advantage.

1985 US Israel FTA

US-Israel bilateral trade totaled $36.8 billion in 2008—the US trade deficit with Israel reached $7.8 billion.

Illustration 8: US Israel FTA Performance

Precious stones, metals and coins account for almost half of Israeli exports to the US, followed by pharmaceutical products which grew from less than $57.1 million in 1995 to $2.6 billion (12.4% of total exports) in the year 2007. The US has had a trade deficit with Israel every year since 1994. When inflation is factored in the real value of the cumulative deficit through 2008 totals US -$71 billion.

9. Conclusion

The tainted process that produced the US-Israel Free Trade Area violated the intellectual property rights of every American business, industry association, and individual petitioner that responded to the International Trade Commission's February 15, 1984 call for public input. Although all ITC executive documents related to the leak were subsequently purged from that agency's executive files[36] relevant public information released under the Freedom of Information Act about the agreement's negotiations, and the subsequent IP misuse of sensitive industry data point to violations as endemic in the Israeli approach to trade with the United States. The losses to US industry are compounded by a far more fundamental and looming threat—failure to uphold rule of law in the United States leading to declining governance and wealth production.

To date, the USTR, ITC, and law enforcement authorities with jurisdiction over the violations outlined in this complaint, though chartered to enforce trade agreements, have done relatively little to uphold rules that benefit US industries and workers. The FBI terminated its investigation of the original leak of the report *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180* in 1984. However, the Department of Justice has signaled it is becoming more serious about military industrial commercial espionage against the United States, even in "cold cases" by criminally charging Ben-Ami Kadish in 2008. However, although the negative economic impact of the charges alleged in the Kadish criminal complaint were significant, the defendant was allowed to plead guilty to a far lesser charge (acting as an unregistered foreign agent for Israel). The DOJ is not well positioned to play a productive role in trade related issues.

Such lax law enforcement and trivial punishment for crimes generates billions in losses for US industry, loss of export control over sensitive military technology, as well as the loss of hundreds of thousands of high paying American jobs. The lack of American political accountability (governance) inherent in such lax law enforcement has a direct and quantifiable impact on the future economic viability of the United States, according to a survey of new economic studies published in the *Economist*.

> "Economists became fascinated by the rule of law after the crumbling of the "Washington consensus". This consensus, which was economic orthodoxy in the 1980s, held that the best way for countries to grow was to "get the policies right"—on, for example, budgets and exchange rates. But the Asian crisis of 1997-98 shook economists' confidence that they knew which policies were, in fact, right. This drove them to re-examine what had gone wrong. The answer, they concluded, was the institutional setting of policymaking, especially the rule of law. If the rules of the game were a mess, they reasoned, no amount of tinkering with macroeconomic policy would produce the desired results. ...in the long run, a country's income per head rises by roughly 300 percent if it improves its governance by one standard deviation. One standard deviation is roughly the gap between India's and Chile's rule-of-law scores, measured by the [World] bank. As it happens, Chile is about 300 percent richer than India in purchasing-power terms."[37]

President Obama promised Americans he would evaluate government programs and cancel any that are not producing positive results. The quantifiable, longstanding and intangible negative outcomes for American stakeholders clearly place this trade agreement squarely in the column of "failed programs". President Obama has also promised renewed attention to law enforcement:

36 Background Interviews with ITC staff – November and December, 2008
37 "Order in the Jungle" The Economist, May 13, 2008

> "My view is also that nobody's above the law and, if there are clear instances of wrongdoing, that people should be prosecuted just like any ordinary citizen."[38]

IRmep is not herein joining previous petitioners pleading for additional investigations, public hearings, complaints to the WTO, diplomatic inquiries to Israel or other now demonstrably ineffective "process" oriented remediation that has failed in the past. Nor do we argue against other agreements or true free trade principles underpinned by comparative advantage economics. Rather, we urge the USTR under its "Scope of Authorized Retaliatory Action" to immediately suspend all benefits toward eliminating or phasing out this act.[39] **Suspending the US-Israel FTA would protect the future wealth creation potential of American intellectual property, preserve rule of law and enhance governance in the United States.** Canceling the US-Israel Free Trade Area would also provide space for a comprehensive review of a quarter century of Israeli corporations violating intellectual property through a persistent pattern of commercial espionage and purposefully inadequate regulatory and law enforcement regimes. The USTR, as a party to the fatally flawed process that created this trade agreement, is the only government entity empowered to rectify it. This should include reasonable recovery of damages on behalf of US industries and workers for past IPR violations.

38 http://www.cnn.com/2009/POLITICS/02/09/obama.conference.transcript/index.html
39 SECTION 301 OF THE 1974 TRADE ACT

10. Appendix

Chronology of Israeli Paris Convention/TRIPs Violations 1984-2009

Date	TRIPs Issue
1984	AIPAC and the Israeli Government obtain a copy of the classified ITC report *Probable Economic Effect of Providing Duty Free Treatment for US Imports from Israel, Investigation No. 332-180.* The 300 plus page report is a compilation of the most highly sensitive data and business confidential information from the US industries with the largest stake in the US Israel trade agreement.
1985	Naval Analyst Jonathan Pollard pleads guilty to passing classified military industrial information to Israel and receives a life sentence in 1987. Pollard's handler surfaces again, identified in 2008 charges against fellow spy Ben Ami Kadish as "Co-conspirator 1" ("CC-1"), and is an Israeli citizen who was employed by defense contractor Israeli Aircraft Industries in Israel during the 1970s before becoming consul for science affairs at the Israeli Consulate General in Manhattan from July 1980 through November 1985.
1987	The US funded Israeli "Lavi" jet fighter program is canceled amidst growing concerns over IP leaks.
1989	Henry Sokolski highlights Israeli-South Africa military ties and that Israeli ballistic missile component exports were a "serious concern at the highest level" of the Defense Department. US origin parts or technology reexported to Apartheid South Africa included aircraft engines, anti-tank missiles, armored personnel carriers, and recoilless rifles.
1990	US intelligence community report titled "Israel: Marketing US Strategic Technology" names countries to which Israel sold weaponry containing US technology.
1991	Israeli and Dutch firm Delft make unauthorized sales of US thermal imaging technologies in tank sights to countries including China, which installs them on 69 MOD-2 tanks for sale to Iraq. U.S. Marines face the tanks and capture evidence of the illegal transfer during the first Gulf war.
1992	State Department inspector general Sherman Funk, "Report of Audit: Department of State Defense Trade Controls" states that alleged Israeli violations of US laws and regulations "cited and supported by reliable intelligence information show a systematic and growing pattern of unauthorized transfers ... dating back to about 1983". Information gathering from US defense firms concerned about delays in export license processing reveals the unauthorized technology reexport problem.
1993	CIA releases previously classified congressional testimony by former director of Central Intelligence James Woolsey that Israel had supplied China with advanced military technology throughout the 1980s including next generation air-to-air missiles and tank program IP. Woolsey states "the Chinese seek from Israel advanced military technologies that US and Western firms are unwilling to provide."
1995	David Ivri, director general of the Israeli Ministry of Defense acknowledges that "some technology on aircraft" had been sold to China and that some Israeli companies may not have "clean hands."
1996	Foreign Policy quarterly article "Israel's Unauthorized Arms Transfers" by Duncan Clarke finds "...according to several U.S. Officials, intelligence reports of Israeli transgressions date back to the early 1970s. The concern is not just that Israel re-exports American systems and components. The more serious problem is that those systems and components are subjected to reverse engineering. That is, Israelis disassemble U.S.-origin products to learn their design secrets. The designs are compiled, often with alterations. The resulting defense items are sold by Israel to other countries. Outwardly these items appear to be indigenous and outside of U.S. Controls. In fact, they are unauthorized copies of American originals and should be fully subject to controls."
1996	1996 GAO Report on "Country A" (Now known to be Israel) Economic Espionage "According to a U.S. intelligence agency, the government of Country A conducts the most aggressive espionage operation against the United States of any U.S. ally. Classified military information and sensitive military technologies are high-priority targets for the intelligence agencies of this country. Country A seeks this information for three reasons: (1) to help the technological development of its own defense industrial base, (2) to sell or trade the information with other countries for economic reasons, and (3) to sell or trade the information with other countries to develop political alliances and alternative sources of arms. According to a classified 1994 report produced by a U.S. government inter-agency working group on U.S. critical technology companies,2 Country A routinely resorts to state-sponsored espionage using covert collection techniques to obtain sensitive U.S. economic information and technology. Agents of Country A collect a variety of classified and proprietary information through observation, elicitation, and theft. The

	following are intelligence agency examples of Country A information collection efforts: • An espionage operation run by the intelligence organization responsible for collecting scientific and technological information for Country A paid a U.S. government employee to obtain U.S. classified military intelligence documents. • Several citizens of Country A were caught in the United States stealing sensitive technology used in manufacturing artillery gun tubes. • Agents of Country A allegedly stole design plans for a classified reconnaissance system from a U.S. company and gave them to a defense contractor from Country A. • A company from Country A is suspected of surreptitiously monitoring a DOD telecommunications system to obtain classified information for Country A intelligence. • Citizens of Country A were investigated for allegations of passing advanced aerospace design technology to unauthorized scientists and researchers. • Country A is suspected of targeting U.S. avionics, missile telemetry and testing data, and aircraft communication systems for intelligence operations. • It has been determined that Country A targeted specialized software that is used to store data in friendly aircraft warning systems. • Country A has targeted information on advanced materials and coatings for collection. A Country A government agency allegedly obtained information regarding a chemical finish used on missile reentry vehicles from a U.S. person.
1997	US Naval Intelligence unclassified report "Worldwide Challenges to Naval Strike Warfare" states US-derived technology from the canceled Israeli Lavi fighter was transferred from Israel for use on China's new F-10 fighter "The design has been undertaken with substantial direct external assistance, primarily from Israel and Russia, with indirect assistance through access to US technologies." the F-10 is a single-seat, light multi-role fighter based heavily on the canceled Israeli Lavi program.
2005	Annual Report to Congress on Foreign Economic Collection and Industrial Espionage 2005 reports that: "In March 2005, a US company pleaded guilty to exporting digital oscilloscopes to Israel without a license. The items were capable of being utilized in development of weapons of mass destruction and in missile delivery fields." In December 2004, a US citizen pleaded guilty to conspiracy to violate the Arms Export Control Act after purchasing from US vendors sensitive US military items, including components for HAWK missiles, military radars, and F-4 Phantom fighter jet aircraft for export to Israel. The individual knowingly failed to obtain the required export license. The individual has previously exported items via Israel to Iran."
2005	The Pharmaceutical industry association PhRMA alleges "The Government of Israel has also assembled an array of market access barriers that substantially impede access of Israeli patients to new, innovative products. For these reasons, PhRMA members recommend that Israel be designated as a Priority Foreign Country in the course of the 2006 "Special 301" Review Process. In addition, PhRMA urges that the United States oppose Israel's candidacy for OECD membership until Israel has brought its intellectual property protection to the level found in the developed country members of the OECD. Furthermore, given the continued systematic discrimination against the products of its member companies in the Israeli market, PhRMA urges the United States to review US drug approval regulations to ensure reciprocity between US regulatory practice and that of other countries whose companies enjoy the benefits of the open US market for pharmaceutical products."
2006	Israel is placed on USTR Priority Watch List for "unfair commercial use of undisclosed test and other data submitted by pharmaceutical companies seeing marketing approval for their products."
2007	Israel remains on USTR Priority Watch List for "inadequate protection against unfair commercial use of data generated to obtain marketing approval."
2008	Israel remains on USTR Priority Watch List "The United States remains seriously concerned, however, with Israel's inadequate level of protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products."
2008	ITC rejects requests to declassify the report *Probable Economic Effect of Providing Duty Free Treatment for US Imports from Israel, Investigation No. 332-180* on the grounds that the 300 plus page report's sensitive data and business confidential information from US companies is still highly sensitive.

2008	Ben-Ami Kadish pleads guilty to being an "unregistered foreign agent for Israel. Between October 1963 and January 1990 Kadish was employed as a mechanical engineer by the United States Army Armament Research, Development and Engineering Center at the Picatinny Arsenal in Dover, New Jersey. Kadish conspired to disclose national defense, and military industrial related documents to Israel while working as an agent of the Israeli government between 1979 and 1985. Kadish repeatedly removed classified documents to his Israeli handler's home in Riverdale, Bronx , New York. Purloined military industrial information included data about nuclear weapons, a modified F-15 fighter, and the Patriot missile system. The Israeli handler of Kadish, identified in the indictment as only as "Co-conspirator 1" ("CC-1"), is an Israeli citizen who was employed by the defense contractor Israeli Aircraft Industries in Israel in the 1970s before consul for science affairs at the Israeli Consulate General in Manhattan from July 1980 through November 1985. Kadish was charged with four counts: one count of conspiring to disclose documents related to the national defense of the United States to the Government of Israel; one count of conspiring to act as an agent of the Government of Israel; one count of conspiring to hinder a communication to a law enforcement officer; and one count of conspiring to make a materially false statement to a law enforcement officer.
2009	The USTR rejects FOIA a request for the report *Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180 (redesignated TA-131(b)-10)* "The report is being withheld in full pursuant to 5 U.S.C. 552(b)(1), which pertains to information that is properly classified in the interest of national security pursuant to Executive Order 12958."
2009	Israel remains on USTR Priority Watch List "...the United States remains seriously concerned with two key matters: Israel's inadequate protection against unfair commercial use of undisclosed test and other data generated to obtain marketing approval for pharmaceutical products, and measures that adversely affect the length of patent term extension granted to compensate for delays in obtaining regulatory approval of a pharmaceutical product. These policies result in an unfair disadvantage to innovative pharmaceutical companies who receive comparatively weak protection for innovative pharmaceutical products under Israel's current laws."

1/31/1984 USTR Letter to the ITC Chartering Investigation of US-Israel Free Trade Area

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

027326

1984 JAN 31 AM 8 37

OFFICE OF THE SECRETARY 1984
DOCKET USITC

The Honorable Alfred Eckes
Chairman
U.S. International Trade Commission
701 E Street, N.W.
Washington, D.C. 20436

Dear Chairman Eckes:

During the recent visit of Prime Minister Yitzhak Shamir of Israel, President Reagan agreed that the Government of the United States would enter into negotiations with the Government of Israel with a view to the establishment of a free trade area between the United States and Israel. The Administration will seek legislation early this year which would implement such an arrangement.

In connection with these negotiations, to assist the President in making an informed judgment as to the impact which might be caused by the establishment of such a free trade area on U.S. manufacturing, agriculture, mining, fishing, labor, and consumers, at the direction of the President I request the Commission to conduct an investigation, pursuant to section 332(g) of the Tariff Act of 1930, and to advise the President, with respect to each item in the Tariff Schedules of the United States as to the probable economic effect of providing duty free treatment for imports from Israel on industries in the United States producing like or directly competitive articles and on consumers.

The Commission's advice will also be requested as to the probable economic effects of certain modifications in nontariff areas on domestic industries and purchasers and on prices and quantities of articles in the United States. A list of these nontariff areas will be forwarded shortly.

In all respects the Commission should conduct this investigation as if this request had been made pursuant to section 131 of the Trade Act of 1974, including the holding of public hearings. If prior to the completion of the investigation the Congress enacts legislation permitting the duty reductions which would be necessary in establishing the free trade area, we will request that the investigation be changed to an investigation under section 131 of the Trade Act of 1974. In the event such legislation is passed after completion of the Commission's investigation, we will request that the Commission provide the President similar advice under section 131.

The Commission is requested to provide its advice to the President in this investigation as soon as possible, but not later than four months from the date of receipt of this letter.

Very truly yours,

WILLIAM E. BROCK

WEB:pcc

2/15/1984 Federal Register Notice Soliciting Industry Input into FTA Investigation

FOR FURTHER INFORMATION CONTACT: Denise T. DiPersio, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202/523-0113.

Issued: February 7, 1984.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 84-4141 Filed 2-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-181]

Certain Meat Deboning Machines; Order No. 1

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge John J. Mathias as Presiding Officer in this investigation.

The Secretary shall serve a copy of this order upon all parties of record and shall publish it in the **Federal Register**.

Issued: February 8, 1984.

Donald K. Duvall,

Chief Administrative Law Judge.

[FR Doc. 84-4142 Filed 2-14-84; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-181]

Certain Meat Deboning Machines; Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is heregy given that a complaint was filed with the U.S. International Trade Commission on January 3, 1984, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Lever Brothers Co., 390 Park Avenue, New York, New York 10022; Protecon B.V., Wim de Korverstraat 43a, Postbus 9, 5830 44 Boxmeer, Holland; and Protecon, Inc., P.O. Box 1109, 1126-88th Place, Kenosha, Wisconsin 53151. Supplements to the complaint were filed on January 31, 1984 and February 1, 1984. The complaint as supplemented alleges unfair methods of competition and unfair acts in the importation of certain meat deboning machines into the United States, or in their sale, by reason of alleged infringement of claim 1 of U.S. Letters Patent 4,137,605. The complaint further alleges that the effect of tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an efficiently and economically operated domestic industry and/or to prevent the establishment of such and industry in the United States.

Complainants request the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and a permanent cease and desist order.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in section 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on February 1, 1984, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain meat deboning machines into the United States, or in their sale, by reason of alleged infringement of claim 1 of U.S. Letters Patent 4,137,605, the effect or tendency of which is to prevent the establishment of an efficiently and economically operated domestic industry in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Lever Brothers Co., 390 Park Avenue, New York, New York 10022

Protecon B.V., Wim de Korverstraat 43a, Postbus 9, 5830 44 Boxmeer, Holland

Protecon, Inc., P.O. Box 1109, 1126-88th Place, Kenosha, Wisconsin 53151.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served.

Machinefabrieken H.J. Langen & Zoner B.V. Cuyk, Netherlands

H.J. Langen & Sons, LTD., 2357 Devon Ave., Elk Grove, Village, Illinois 60607.

(c) Linda L. Moy, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 126, Washington, D.C. 20436, shall be the Commission investigative attorney, a party to this investigation; and

(3) For the investigation so instituted, Donald K. Duvall, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding officer.Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to § 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and inthis notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the presiding officer and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202-523-0471.

FOR FURTHER INFORMATION CONTACT: Linda L. Moy, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202-523-4693.

Issued: February 8, 1984.

By order of the Commisaion.

Kenneth R. Mason,

Secretary.

[FR Doc. 4144 Filed 2-14-84; 8:45 am]

BILLING CODE 7020-02-M

[332-180]

Probable Economic Effect of Providing Duty-Free Treatment for Imports From Israel

AGENCY: International Trade Commission.

ACTION: Institution of an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) concerning the probable economic effect of providing duty-free treatment for imports from Israel on U.S. industries producing like or directly competitive articles and on consumers, at the direction of the President, and the scheduling of a hearing in connection therewith.

332-180

EFFECTIVE DATE: February 8, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Roeder (202-724-1170)—Agricultural and forest products

04/10/1984 Written Testimony of Thomas A. Dine, Executive Director American Israel Public Affairs Committee (AIPAC) before the International Trade Commission Hearings on a Proposed Free Trade Area Between Israel and United States

PUBLIC INSPECTION

WRITTEN TESTIMONY OF THOMAS A. DINE

EXECUTIVE DIRECTOR

AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE

BEFORE THE INTERNATIONAL TRADE COMMISSION

HEARINGS ON A PROPOSED

FREE TRADE AREA BETWEEN ISRAEL AND UNITED STATES

APRIL 10, 1984

I appreciate this opportunity to submit testimony supportive of the proposed U.S.-Israel Free Trade Area (FTA) arrangement.

The American Israel Public Affairs Committee (AIPAC) is a domestic lobbying organization concerned with U.S. foreign policy, especially as it relates to U.S.-Israel relations. On AIPAC's Executive Committee sit the presidents of the 38 major American Jewish organizations representing more than four and a half million members throughout the United States.

Recognizing that mutually advantageous commercial relations between Israel and the United States are important to both nations for economic, as well as political and strategic reasons, AIPAC strongly supports the establishment of a Free Trade Area between the two nations. We believe that the elimination of tariff and non-tariff barriers on a broad array of products and services traded will, in the medium and long-term, increase the two-way flow of trade and investment in a way that will strengthen the economies of both nations. Moreover, because of Israel's small size and limited production capacity relative to the U.S., there is little reason to fear major short-term negative effects from increased Israeli imports into the U.S. The proposed Free Trade Area is therefore a two-way gain--both countries will reap benefits from the pact. It would also be a meaningful step towards solidifying the unique relationship between our two democratic nations.

Although the ITC's focus is primarily on imports, it is important to note at the outset the impetus an FTA will provide to increased U.S. exports, since at the present time about 40 to 45 percent of our exports face Israeli tariffs. Non-tariff barriers to trade will be reduced as

well. In addition, eliminating tariffs on U.S. goods will strengthen their competitive position relative to products from the European Community, which has already signed a free trade arrangement with Israel. According to the Manufacturers Association of Israel, the EC's share of Israeli imports has been gradually increasing from 33.7 percent in 1980, to 40.9 percent in the first three quarters of 1983. The U.S. share dropped to 18.9 percent, from 19.3 percent in 1980 and 20.2 percent in 1979. That share will probably drop further--unless similar arrangements are made with the United States--as duties are completely eliminated on EC products entering Israel by 1989. [For a sample list of products, see Appendix II].

A special urgency exists in Israel's need to have strong commercial relations with the U.S. and Europe, since neighboring Arab countries have not only closed their markets to Israel, but have employed an economic boycott and petro-pressures to close many Third World markets to the Jewish state.

Israel is a small nation of four million people. Its export potential is limited by a restricted supply of skilled labor and shortage of natural resources. Israel's total exports to the U.S. are at most one half of one percent of total imports coming into the United States. Therefore, there is minimal risk of Israeli products swamping the American market as a result of a Free Trade arrangement.

This is especially the case in agriculture, where Israeli production is limited by lack of water as well as land. In 1983, for example, which was a bad year in many respects for U.S. agricultural exports worldwide, the U.S. exported $306 million worth of farm products to

Israel, while importing only $51 million worth-- a six-fold surplus, according to U.S. Agriculture Department statistics. Moreover, most of Israel's food exports go to Europe which is the logical market for Israeli products, particularly perishable commodities. According to the Bank of Israel's 1982 Annual Report, in the 1980 to 1981 period, only 0.9 percent of Israel's agricultural exports went to the U.S., while almost 90 percent went to European markets. In addition, statistics show that Israeli citrus production and exports in particular are declining. According to U.N. trade data, Israeli exports of oranges and tangerines declined by 30 percent in 1982 over 1981, and by 15 percent for lemons and grapefruits. Most of the juice (95 percent) we import from Israel is apple juice rather than citrus juice and, even in apple juice, Israel's share is only two percent of U.S. apple juice imports, according to a USDA study.

The concerns of other U.S. industries should be viewed in a similar perspective and with a sense of proportion regarding the small size of the country in question. For example, in footwear, Israel's total world-wide exports are only $5 million, while it imports $20 million. Since Israel imports almost all of its hide and skin requirements and much of its leather--and since leather footwear faces an approximately 20 percent tariff in Israel--it is my estimate that American industry would gain rather than lose from inclusion of its sector in an FTA. It is also worth noting that in 1983 the U.S. exported to Israel $6.2 million worth of textile and leather-working machinery and parts, according to Commerce Department data.

In textiles and apparel, again, U.S. industries' concerns must be viewed in perspective. Even if Israel were to double its current approximate

$18 million worth of textile and apparel exports to the U.S., this would still be only a fraction of America's $8 billion worth of clothing imports in 1981. Almost 90 percent of Israel's apparel exports are to Western Europe, where fashion tastes are more similar. Moreover, by excluding this sector from the FTA the U.S. would lose out on the export side, since American textiles are a major export item to Israel. It currently faces tariffs of 15-to-16 percent on many of the man-made fibers where the U.S. comparative advantage lies. In 1982, the U.S. exported $30.7 million worth of textiles to Israel, while importing only $5.1 million. It is my belief there is little danger of having apparel manufactured in other countries either circumventing MFA quotas or finding its way duty-free into the U.S. market. Strict Rules of Origin will no doubt be included as part of the final FTA to ensure this will not happen. Israel has a good record in this regard in its agreement with the European Community.

Concerns have also been expressed by the U.S. bromine industry about the potential impact of an FTA. An American importer of bromine compound, however, has expressed concern, as he wrote to the Senate Finance Committee, that the U.S. industry is a highly concentrated "elite group," currently situated in a position of great market strength. Thus, it is in the interests of the American manufacturers, retailers, and consumers to inject a bit more competition into the market. "A bit" more competition because there are clear restraints on Israeli production capacity as it relies solely on the Dead Sea; even at its maximum output, impact upon the U.S. market would be minimal since Israel's current base of one percent of domestic consumption is so small.

It is important to note that over 90 percent of Israel's imports already are coming into the U.S. duty-free, due to a combination of the Generalized System of Preferences (GSP) and other U.S. tariff

reductions. For example, the jewelry industry has expressed considerable concern about the proposed FTA, and yet about 97 percent of Israeli jewelry is already coming in duty-free under GSP. Thus, there is little danger of seeing a drastic increase in Israeli imports as the FTA is implemented. Moreover, jewelry production in Israel is based on high-wage, highly-skilled labor and new technology, so Israel would find it difficult to dump cheap products on the U.S. market. According to a Government of Israel survey made in 1980/81, the average wage of an employee in a jewelry exporting firm is between $750 to $1,500 per month.

General concern has also been expressed about the entry of cheap foreign goods into the U.S. that are manufactured in countries where the cost of production is low. But this concern is not appropriate in the case of Israel. Although on average an American worker receives about twice the salary level of his Israeli counterpart in the manufacturing sector, Israeli manufacturers do not necessarily enjoy a cost advantage compared to American producers. According to the Manufacturers Association of Israel, U.S. productivity is far higher than Israel's--about three times as high. In addition, the Israeli manufacturer pays far greater costs for each employee's income tax and social security, plus the cost of hiring extra labor to compensate for army reserves call-ups. The Israeli manufacturer also faces extremely high interest rates, and higher costs for energy and natural resources compared to the American producer counterpart.

Finally, I urge the Commissioners to recommend keeping the proposed FTA as "clean" as possible and avoid gutting the agreement by carving out exception after exception. If there are numerous exceptions, we hamstring our negotiators by preventing them from conducting a broad strategy of

trading advantages over the negotiating table. Also, from the Israeli perspective, since so many of their goods already receive duty-free treatment, it would hardly be to their advantage to conclude an agreement riddled with more exceptions than they live with under current arrangements. From an international perspective, it is also important to cover "substantially" all trade, in order to conform with the rules of the General Agreement on Tariffs and Trade (GATT). Otherwise, both countries would leave themselves vulnerable to other nations charging that the arrangement contravenes the GATT and the threat of trade retaliation. The best way to deal with the threat of possible surges and material injury to U.S. industry is to utilize U.S. trade laws if needed, on a case-by-case basis.

In summary, establishment of a Free Trade Area is a step the United States can take to help Israel while helping the U.S. It is both good trade policy and sound foreign policy. It will be good for the American economy, strengthen a vital ally in the Middle East, and reaffirm the bonds between ourselves and a fellow democracy.

APPENDIX I

TOP U.S. EXPORTS TO ISRAEL IN 1983

(Along with goods' approximate tariff rates according to Bulletin International des Douanes, 1982-1983, No. 41-Israel)

PRODUCT	VALUE	SAMPLE TARIFFS (or range)
Transport equipment	$369 million	Aircraft--Free
Electrical equipment	175 million	Free to 20%
Cereals, grains, flour	170 million	Grains mostly free, Wheat flour - .50 shekels per kilogram Cereal groats, meal - .50 shekels per kilogram
Office machines, data processing equip.	116 million	Free to 14%
Power generating machinery and equip.	108 million	Steam boilers--10% Pumps--14-24% Internal combustion engines--24%
Telecommunications equipment	102 million	TV receivers--22% Radio apparatus--18%
Soybeans	100 million	Free
Specialized industrial machinery	62 million	Agricultural machinery--mostly free Construction machinery--mostly 14% Refrigeration equip.--14%
Chemicals, Related Products	58 million	Free to 16%
Optical, medical, measuring equip.	55 million	Average range 20%, 8%, 16%, respectively
Metals and metal products	54 million	Iron, steel products--about 16% Tungsten--8%
Road vehicles	38 million	Buses--28.3% Cars--35-45% Trailers--16%

PRODUCT	VALUE	SAMPLE TARIFFS (or range)
Paper products	$30 million	Range 10-20%
Textiles, yarns, fabrics	25 million	Average 15-16%
Diamonds	40 million	Free

NOTE: There may be some overlap between product category classifications. Figures come from Commerce Department trade statistics for 1983.

APPENDIX II

SAMPLE TARIFFS - U.S./E.C. PRODUCTS IN ISRAEL

(Note: EC manufactured products should have "0" tariffs by 1989)

SPECIFIC PRODUCTS (according to Manufacturers Assn. of Israel as of January 11, 1984)		% Tariffs U.S.	% Tariffs E.C.
*Sensitized paper, undeveloped		15%	10.6%
Sensitized plates and film, undeveloped		20	Free
Cinematograph film	shekels/kilogram	85.42	Free
*Instant coffee		5	4.2
*Aerated water, flavored		16	10
*Beer		12	6.3
Sauces, condiments		16	9
Vinegar		8	Free
Alcohol (general)		18	18
Cigarettes		12	12
Manufactured tobacco	shekels/kilogram	191.5	12
Certain kinds of above		8	Free
*Medicine		2	Free
Tetanus vaccine		10	Free
*Polyester resins		11.2	7
*Other various resins		10.5	8.5
*Roughwood-mahogany, etc.	Ton	16	9
		+151	+151
*Pine, Conifer, sawn		35	25
*Sawn, not exceeding 5mm		17	10.6
Plywood, veneer-coated		16	11.9
Blockboard, battenboard	shekels/cubic meter	718	574
Wood charcoal		8	4.9
Wooden poles		8	5.9
Pieces beechwood	shekels/cubic meter	96	76
		+28	+25.3
Pieces hard timber	shekels/cubic meter	170	137
Chairs, furniture		30	30
*Printing, writing paper		24	19.1
Condensor paper		8	4.9
Cellulose wadding		16	10.5
Kraft paper, insulating		16	11.9
Filter paper		16	10.5
Glassine paper		22	Free
*Synthetic yarn, not retail		16	9.5
*Man-made fiber yarn		16	11.2
*Cotton yarn		10	6.2

SPECIFIC PRODUCTS		% Tariffs U.S.	% Tariffs E.C.
*Man-made synthetic yarn		6%	4.2%
*Fabrics of synthetic fibers	square meter	14.9	10.6
*Outergarments, women		16	10.6
Felt fabrics	shekels/square meter	90.40	59.92
		+10	+7.9
Rubberized textile fabrics		20	14.4
Electrical appliances		8	4.9
Electrical capacitors		16	14.9
Exciter lamps and sound lamps for films		8	Free
Electro-mech. devices, other		17	14.9
Vacuum cleaners		20	17.8
Food grinders, etc.		20	18.4
*Transmission & Reception Apparatus		22	17.5
*Color TVs		22	20
Some kinds of automation data processing units, machines		4	3.5
Cash registers		8	Free
Accounting machines		13.6	11.9
Other Office machines		20	20
Pencil sharpening machines		14	Free
Machines/Printing tickets, etc.		8	5.9
Refrigerators/equipment		14	14
Cooling towers		16	10.5
Air conditioning machines		14	14
Optical appliances, other		14	Free
Optical microscopes		8	Free
Surveying instruments, range finders		8	4.9
Other for photography		20	13.1
Checking instruments for calculating		8	4.9
Drills, dental instruments		8	4.9
Exposure meters		20	13.1
Instrument panels		8	7
Clock movements		16	10.5
Watch parts		16	11.9
Stop watches		16	10.5
Musical instruments			
Wind instruments		16	Free

NOTE: Items not asterisked--tariffs from Bulletin International des Douanes 1982-1983 #41:Israel

5/30/1984 Investigation Report Transmittal Letter from ITC Chair to President Reagan

5-30-84

The President
The White House
Washington, D.C. 20500

Dear Mr. President:

The enclosed report is in response to the request contained in Ambassador Brock's letter of January 25, 1984, for advice with respect to the probable economic effect on U.S. industries and on consumers of providing duty-free treatment for imports from Israel under a United States-Israel free-trade agreement.

Based on the information gathered in the U.S. International Trade Commission's investigation of the proposed free-trade area, the Commission does not expect duty-free treatment for U.S. imports from Israel to have a significant adverse effect at the aggregate level for any of the major sectors examined; however, at the less aggregated commodity level, significant adverse effects are likely in seven different product areas as discussed in the report.

Please continue to call on us whenever we can be of assistance to you.

Sincerely,

[illegible]

Alfred Eckes
Chairman

Enclosures

8/3/1984 Washington Post Article "FBI Investigates Leak on Trade to Israel Lobby"

The Washington Post - August 3, 1984, Friday, Final Edition

FBI Investigates Leak on Trade To Israel Lobby

BYLINE: By Stuart Auerbach, Washington Post Staff Writer SECTION: First Section; A1 LENGTH: 813 words

The FBI is investigating how the major pro-Israel lobbying group obtained a copy of a classified document that spells out American negotiating strategy in trade talks with Israel, government officials said yesterday.

The document, a report from the International Trade Commission to U.S. Trade Representative William E. Brock, contains proprietary data supplied by American industries and other sensitive information for the negotiations, which began early this year.

Trade officials said the report would give Israel a significant advantage in the trade talks because it discloses how far the United States is willing to compromise on contested issues. Some of the proprietary information, moreover, could help Israeli businesses competing with U.S. companies, officials said.

A spokesman for the American Israel Public Affairs Committee (AIPAC), the principal pro-Israel lobbying group in this country, acknowledged that the organization had a copy of the report but said the lobbying group did nothing illegal.

Brock's office, which classified the document, said it learned from Capitol Hill sources last month that a copy was in the hands of AIPAC.

One congressional office, upon being refused a copy of the report because it was classified, told trade officials that lobbyists for AIPAC would supply it, a USTR source said. USTR then called in the FBI.

Lorin L. Goodrich, who is running an internal investigation in the ITC, said FBI agents brought him the document they said had been in the hands of AIPAC. It was a "reproduced copy" of the final version of the report, he added.

"We cannot tell how they obtained it or whether it came from the U.S. Trade Representative or the ITC," said Goodrich, who is the ITC's director of administration. "We have accounted for all of our copies, and there is no way we can tell that it was reproduced from a copy at the ITC."

FBI agents have also talked to officials at USTR, according to an official there.

The FBI had no comment on the investigation last night, but an AIPAC spokesman confirmed that the organization turned over a copy of the report to the U.S. government.

"We did not solicit it. We gave it back to them. There was nothing illegal about our having something that was not solicited," said the AIPAC spokesman,who asked that his name not be used.

He declined to say who supplied the document, but added that AIPAC Executive Director Thomas A. Dine was unaware that the organization had the report until after a call from Brock's office prompted a check.

AIPAC has been pushing hard for congressional passage of a bill that would authorize Brock to negotiate a free trade agreement with Israel. Although the bill has not passed Congress, negotiations have been going on for months under what a Brock aide acknowledged was a "grey area" of authority.

The bill has the strong support of the Reagan administration, which agreed to move toward a free trade arrangement as part of a number of concessions President Reagan made during the visit to Washington last November by Prime Minister Yitzhak Shamir.

Brock has said publicly that the trade talks with Israel are going well. The legislation, however, has become a sensitive issue on Capitol Hill, where it has run into opposition from California fruit growers and textile interests who are concerned that products from Israel could take over the U.S. market. They are also raising concerns that citrus products, canned tomatoes and textiles from neighboring Mediterranean nations could be shipped to the United States through Israel to take advantage of its free trade status.

Sen. Pete Wilson (R-Calif.), for instance, arranged a meeting with Brock for farmers, who expressed their concerns over what free trade with Israel could mean for California agriculture.

The opposition has been muted, however, by the political clout of the pro-Israel lobby. "Because of our relationship with that country, the bill has not had the full debate that it would have gotten if it had involved any other country," said Thomas A. Hammer, an attorney representing California fruit growers.

Hammer wants exemptions written into the law to ensure specialty agriculture products will not be part of a free trade pact with Israel.

There are indications that Brock might be willing to go along with exemptions for textiles and farm products to get the bill passed and to save some lawmakers from the embarrassment of having to put a hold in the closing days of the session on legislation supported by both the administration and Israel.

Brock would like the Israel trade bill brought to the Senate floor next week as part of a package of non-controversial measures, but it appears unlikely to move that quickly. Senate Majority Leader Howard Baker (R-Tenn.) said he will allow only one day's debate for the bill, but he has not set aside any time for it.

11/1/1984 U.S. Bromine Alliance letter of complaint to the ITC about Classified Report Leak

[redacted]

INTERNATIONAL TRADE AFFAIRS

Ethyl Corporation
611 Madison Office Building
1155 15th St., N.W.
Washington, DC 20005
Telephone 202-223-4111

November 1, 1984

DELIVERED BY MESSENGER

Dr. Paula Stern, Chairwoman
U.S. International Trade Commission
701 "E" Street, N.W.
Washington, D.C. 20436

Dear Dr. Stern:

Thank you for meeting with us this morning and for your genuine interest about our concerns relating to the Commission's security procedures for "business confidential" information submitted by the private sector. We very much appreciate your willingness to review the various matters we discussed with you, and particularly those included on the document (copy enclosed) that we left with you and Mr. Goodrich.

We look forward to your response on how you might be able to describe, characterize, or give us specifically what "business confidential" information, submitted by the U.S. Bromine Alliance, was included in the Commission's confidential report concerning the U.S. - Israel Free Trade Area proposal that was prepared for the U.S. Trade Representative. We are also hopeful you will be able to tell us (as an example on point) what you found within the Commission concerning the disposition of the 15 copies of "business confidential" information we recently submitted in connection with your GSP investigation.

As you review the other items in the enclosed document to see what type of further advice you can furnish to us with respect to the Commission's standard security procedures, we will undertake to draft a proposal (for consideration) on the type of handling we hope the Commission would adopt with respect to future submissions of "business confidential" information from the U.S. Bromine Alliance or the individual member companies of the Alliance. We also plan to review this same subject with the appropriate personnel at the Office of the U.S. Trade Representative.

Thank you again for your warm reception and cooperation.

Sincerely,

U.S. BROMINE ALLIANCE

By: Max Turnipseed
Max Turnipseed

MT:clk
Enclosure
cc: U.S. Bromine Alliance Members
Edward R. Easton, Fsquire
Will E. Leonard, Esquire

November 1, 1984

Talking Points for Meeting with Dr. Paula Stern,
Chairwoman, U.S. International Trade Commission

1. Persons present.

Max Turnipseed, Spokesman, U.S. Bromine Alliance, accompanied by Will E. Leonard and Edward R. Easton, attorneys, Busby, Rehm and Leonard, P.C.

2. General Topic.

Commission security procedures for confidential business information submitted to the agency.

3. Background.

The U.S. Bromine Alliance supplied very sensitive cost information to the Commission in response to the Commission's requests for confidential business data in connection with its report on a free trade agreement with Israel. The Alliance presumes that these data were quoted in the Commission's confidential report to the USTR, a copy of which was obtained by representatives of the American-Israel Public Affairs Committee.

The Alliance is currently an interested party in the on-going GSP-related investigations Nos. 503(a)-12 and 332-187. The Alliance has also submitted confidential business information to the Commission in connection with these investigations also.

4. Specific inquiries concerning the Commission's procedures for handling confidential business information;

a. When confidential Commission reports are supplied to the President, the Congress, USTR, or the GAO, what procedures are followed in addition to individually numbering the limited copies supplied? Does a contact person with the recipient undertake to insure that no additional copies will be made? Are there agreements to keep the copies of the reports in a secured filing system with "need to know access" at the recipient institution?

b. Does the Commission have a legal obligation to submit information that may be confidential to any other agencies?

c. The Commission's regulations require a signed original and fourteen copies of each document submitted by a party to an investigation. Is there a Commission policy statement identifying those persons who receive each of these copies? Is there a method for controlling additional copies made from the copies submitted? What criteria exist for guidance with respect to whether additional copies are made? Who is designated to know the location of each copy and those persons with access to it?

d. What are the Commission's instructions to its employees concerning the handling of confidential business submissions? Is the staff instructed not to accept writings which have not been declared confidential by the Secretary? What instructions exist concerning information solicited by telephone or in meetings? Does a staff person decide whether notes concerning such

information are to be treated as confidential information or is the staff instructed to consult supervisory personnel in making the decision?

e. How are the Commission's employees made aware of mandatory security procedures? How often does the Office of Administration survey compliance with these instructions?

f. Does the Commission have a training program for instructing its employees on the treatment of submissions from business entities? How often is the program presented? How often are employees required to participate? Would the Commission allow interested business groups to participate in designing future programs?

5. Unlike other administrative agencies such as the Environmental Protection Agency or the Federal Drug Administration, the Commission has not undertaken to notify the submitter of confidential business information when access to such information is sought under the Freedom of Information Act or otherwise. Would the Commission be willing to amend its regulations to notify the submitter when such access was sought?

11/29/1984 ITC Letter to US Bromine Alliance Confirming Confidential Business Data Leaked from Classified Report.

CHAIRWOMAN

RECEIVED

OFFICE OF THE SECRETARY
U.S. INTERNATIONAL TRADE COMMISSION

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

November 29, 1984

Mr. Max Turnipseed
U.S. Bromine Alliance
c/o Ethyl Corporation
1155 15th Street, N.W.
Washington, D. C. 20005

Dear Mr. Turnipseed:

This is in reply to your November 1, 1984, letter sent to me following the meeting of the same day relating to the handling of "business confidential" information by the U. S. International Trade Commission. In addition to your observations on our security procedures you have specific inquiries concerning (1) the "business confidential" information submitted by the U. S. Bromine Alliance in connection with the U.S.-Israel free trade study, and (2) the disposition of the 15 copies of "business confidential" information the Alliance submitted in connection with the current GSP investigation. I would like to address these matters separately.

1. You requested us to describe, characterize, or specify what business confidential information submitted by the U.S. Bromine Alliance in your letter of April 27, 1984, was included in the U. S. International Trade Commission's confidential report to the U. S. Trade Representative on investigation No. 332-180, Probable Effect of Providing Duty-Free Treatment for Imports from Israel.

   The specific business confidential numbers extracted from the Alliance's letter and shown in the report included: (1) the production cost for bromine, (2) production cost, raw material cost, depreciation, or manufacturing cost, by-product cost, and shipping cost for the compound TBBPA and (3) the length of time that sales of domestic TBBPA could be supplied from inventory.

As we discussed at the November 1 meeting the study is currently classified "confidential" from a national security standpoint by the Office of the U. S. Trade Representative. For your information I am enclosing a copy of the clearance (enclosure 1) we received from that office to allow us to provide you the above characterization of the "business confidential" information submitted by the Alliance.

2. Disposition of "business confidential" information related to investigation nos. 503(a)-12 and 332-187 ("GSP- to Add Products to the List of Eligible Articles for the Generalized System of Preferences") - in this particular case the 15 copies of the Alliance's "business confidential" information was distributed within the U. S. International Trade Commission as listed below. It should be noted that not all of the 15 copies are currently in the Commission's files. Some have already been processed for disposal by burning or shredding.

	Number of Copies
Chairwoman Stern	1
Vice Chairman Liebeler	1
Commissioner Eckes	1
Commissioner Lodwick	1
Commissioner Rohr	1
Energy and Chemicals Division	1
Office of the General Counsel	1
Office of Economics	1
Office of the Secretary	Original and 6 copies

Total: Original and 14 copies.

I appreciate your comments concerning the Commission's information security procedures and welcome any suggestions you may have. You may be assured that we place a high priority on safeguarding sensitive data and we are currently preparing detailed internal procedures. At this point we can respond to items 4. a., 4. b. and 5 of the discussion paper you left with me on November 1 (enclosure 2).

I hope this information is useful to you and we look forward to the Alliance's participation in future Commission investigations and studies.

Sincerely,

Paula Stern

Paula Stern
Chairwoman

Enclosures

cc: Norris Lynch
Ken Mason
Mike Mabile
Lorin Goodrich

1/07/1985 Federal Register Notice Terminating Investigation

332-180

FOR FURTHER INFORMATION CONTACT: Robert D. Litowitz, Esq., or Deborah S. Strauss, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, telephone 202–523–4693 or 202–523–1233, respectively.

Authority

The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on January 4, 1985, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain convertible rowing exercisers into the United States, or in their sale, by reason of alleged (1) infringement of claims 1, 2, 3, and 5–18 of U.S. Letters Patent 4,477,071 and (2) infringement of claims 1–9 of U.S. Letters Patent 4,488,719, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Diversified Products Corporation, 309 Williamson Avenue, P.O. Box 100, Opelika, Alabama 36803.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

H.C. Enterprise Co., Ltd., P.O. Box 26–842, Taipei, Taiwan

Ever Young Industries Co., Ltd., 11th Floor, No. 624, Ming Chuan East Road, Taipei, Taiwan

Seasonal Merchandise Development Co., Ltd., P.O. Box 43–156, Taipei, Taiwan

Pan's World International, Ltd., 7th Floor, No. 22, Chung-Cheng Road, Shih-Lin, P.O. Box 58937, Taipei, Taiwan

Astar Data International, Inc., 1201 South Edith, Alhambra, California 91803

Sunstar International, Inc., 24–16 Queens Plaza South, Long Island City, New York 11101

M.T.I., Inc., P.O. Box 190, Manan, Idaho 83434

National Sporting Goods Corporation, 25 Brighton Avenue, Passaic, New Jersey 07055

Weslo Design International, Inc., 750 Mountainview Drive, P.O. Box 10, Logan, Utah 84321

Shinn Fu Company of America, Inc., 1004 Andover Park East, Tukwila (Seattle), Washington 98188.

(c) Robert D. Litowitz, Esq., and Deborah S. Strauss, Esq., Unfair Import Investigations Division, U.S. International Trade Commission, 701 E Street NW., Room 128, Washington, D.C. 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) for the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21 as amended, 49 FR 46123). Pursuant to §§ 201.16(d) and 210.21(a) of the rules, such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the Administrative Law Judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, D.C. 20436, telephone 202–523–0471.

Issued: January 8, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–1270 Filed 1–15–85; 8:45 am]

BILLING CODE 7020–02–M

[TA–131(b)–10]

Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports From Israel

AGENCY: International Trade Commission.

ACTION: Redesignation of Commission investigation No. 332–180 as investigation No. TA–131(b)–10.

Background

On December 10, 1984, the Commission received a letter from the U.S. Trade Representative (USTR) requesting that the Commission provide advice under section 131 of the Trade Act of 1974 (19 U.S.C. 2151) with respect to articles provided for in the Tariff Schedules of the United States and which are products of Israel conforming to the criteria specified in section 402 of the Trade and Tariff Act of 1984 (Pub. L. 98–573, approved Oct. 30, 1984), which articles will be considered for duty-free treatment in the negotiation of a free trade arrangement with Israel. The advice requested concerns the probable economic effect to providing such duty-free treatment on industries in the United States producing like or directly competitive articles and on consumers.

The Commission provided USTR with such advice on May 30, 1984, as a result of investigation No. 332–180. At the request of USTR, that investigation was conducted in all respects as though the advice had been requested under section 131. A public hearing was held. Notice of the investigation and public hearing was published in the **Federal Register** of February 15, 1984 (49 FR 5841).

In response to USTR's request received December 10, the Commission has redesignated investigation No. 332–180 as investigation No. TA–131(b)–10, with no change in scope of the investigation. The Commission has notified USTR that the advice provided on May 30, 1984, in connection with investigation No. 332–180 is to be considered as the Commission's advice for the purpose of this investigation.

EFFECTIVE DATE: January 2, 1985.

Issued: January 7, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–1275 Filed 1–15–85; 8:45 am]

BILLING CODE 7020–02–M

12/29/2008 ITC Denies FOIA Request based on exemptions for national security information, trade secrets and other nondisclosure provisions.

Secretary

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

December 29, 2008

Mr. Grant F. Smith
Director of Research
Institute for Research: Middle Eastern Policy
Calvert Station, P. O. Box 32041
Washington, DC 20007

Re: FOIA Request #09-11

Dear Mr. Smith:

This letter is in response to your request of November 13, 2008 which we received in this office on December 1, 2008, for processing in accordance with the Freedom of Information Act (FOIA). In your letter you request a copy of certain documents related to the 1984 report on the probable economic effect of providing duty free treatment of U.S. imports from Israel.

A search of our active and inactive files has failed to produce any documents related to the internal investigation referenced in the August 3, 1984 Washington Post article that was attached to your letter. Any such documents would have been retained in the administrative files of the then-Director of Administration, Lorin L. Goodrich. As such these records would have been destroyed in accordance with the General Records Schedules issued by the National Archives and Records Administration.

We have located the 300+ page probable economic effect report that was issued and are withholding it in its entirety pursuant to exemptions 1, 3, and 4 of the FOIA, 5 U.S.C. §§ 552 (b) (1), (3), and (4). Exemption 1 protects from disclosure all national security information concerning the national defense or foreign policy. Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." Exemption 3 incorporates the various nondisclosure provisions that are contained in other federal statutes, in this case, 19 U.S.C. § 1332 (g). No reasonably segregable portion of this record can be provided.

Any requests for information regarding declassification of this report will need to be made to the Office of the United States Trade Representative.

We have located 49 sheets of microfiche that contain the administrative record for this report. Thirteen (13) sheets of microfiche are exempt from disclosure pursuant to exemptions 3 and 4 of the FOIA. No reasonably segregable portion of these records can be provided. The remaining microfiche is public and can be made available for viewing in our Public Reading Room. Please feel free to contact me directly regarding viewing these records. I can be reached at 202.205.2799.

For your information I have included a copy of the two Federal Register notices (49 FR 5841 (February 15, 1984) and 50 FR 2351 (January 16, 1985)) that were issued regarding investigation 332-180.

You have the right to appeal this denial of access to records in the possession of this agency. If you decide to do so, your appeal must be received within 60 days of the date of this letter. It should be addressed to the Chairman, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, and clearly indicate both on the envelope and in the letter that it is a "Freedom of Information Act Appeal." It should clearly state the grounds upon which you believe this denial of access to be in error. For further information on appeal procedures, see 19 CFR 201.18, enclosed.

Sincerely,

Marilyn R. Abbott
Secretary

03/09/2008 USTR Denies FOIA Request for "Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180 based on Executive Order 12958

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

March 9, 2009

Mr. Grant Smith
Institute for Research
Middle Eastern Policy
Calvert Station
P.O. Box 32041
Washington, D.C. 20007

Dear Mr. Smith:

This letter is USTR's final response to your request for **"the complete report prepared by the International Trade Commission to U.S. Trade Representative William E. Brock in preparation for the U.S.-Israel Free Trade Agreement in 1984"**, under the Freedom of Information Act.

Please be advised that, after a thorough review, it has been determined that the report should not be declassified. The report is classified in its entirety, leaving no segregable portions available for public viewing.

The report is being withheld in full pursuant to 5 U.S.C. §552(b)(1), which pertains to information that is properly classified in the interest of national security pursuant to Executive Order 12958.

Inasmuch as this constitutes a complete grant of your request, I am closing your file in this office.

In the event that you are dissatisfied with USTR's determination, you may appeal such a denial, within thirty (30) days, in writing to:

FOIA Appeals Committee
Office of the United States Trade Representative
1724 F Street, N.W.
Washington, DC 20508

Both the letter and the envelope should be clearly marked: "Freedom of Information Act Appeal". In the event you are dissatisfied with the results of any such appeal, judicial review will thereafter be available to you in the United States District Court for the judicial district in which you reside or have your principal place of business, or in the District of Columbia, where we searched for the records you seek. Should you have any questions, please feel free to contact me or my assistant Jacqueline Caldwell at (202) 395-3419.

Sincerely,

Jacqueline B. Caldwell

Jacqueline B. Caldwell
FOIA Specialist

Case File #08122049

03/2/2009 Steve Rosen Civil Suit Against AIPAC

CA 1256'09

Superior Court of the District of Columbia

CIVIL ACTIONS BRANCH

2009 CA 001256 B

ROSEN. STEVEN J
Vs.
AMERICAN ISRAEL PUBLIC AFFAIRS COMMITTEE, INC.,
Filed: 03/02/2009

DATE	COURT CLERK'S MEMORANDUM	JUDGE

CA 1256'09

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

STEVEN J. ROSEN,
2922 Woodstock Avenue
Silver Spring, Maryland 20910,

Plaintiff,

v.

AMERICAN ISRAEL PUBLIC
AFFAIRS COMMITTEE, INC.,
251 H Street, NW,
Washington, D.C. 20001,

and

HOWARD KOHR,
9705 Dansk Court
Fairfax, Va. 22032,

and

MELVIN A. DOW,
11107 Hedwig Lane
Houston, TX 77024,

and

BERNICE MANOCHERIAN,
135 Central Park West
Apt. No. 9 NC
New York, NY 10023-2413,

and

HOWARD E. FRIEDMAN,
6201 Green Meadow Way
Baltimore, MD 21209,

and

Civil Action No. 0001256-09

FILED
CIVIL ACTIONS BRANCH
MAR 02 2009
SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
WASHINGTON, DC

COMPLETED

LAWRENCE WEINBERG,
409 Drury Lane
Beverly Hills, CA 90210,

and

ROBERT H. ASHER,
180 E. Pearson Street
Chicago, IL 60611,

and

EDWARD C. LEVY, JR.,
711 S. Bates Street
Birmingham, MI 48009-1955,

and

LIONEL KAPLAN,
671 Rosedale Road,
Princeton, NJ 08540,

and

TIMOTHY F. WULIGER,
20 Basswood Lane,
Moreland Hills, Ohio 44022-1377,

and

AMY ROTHSCHILD FRIEDKIN,
1340 Clay Street
Apt. No. 901
San Francisco, CA 94109,

and

PATRICK M. DORTON,
5 East Irving Street
Chevy Chase, Maryland 20815,

and

RATIONAL PR, L.C.,
1155 15th Street, NW,
Suite 614
Washington, DC 20005,

Defendants.

COMPLAINT
(Defamation - Libel and Slander)

Introduction

1. Plaintiff brings this action against the American Israel Public Affairs Committee, its Executive Director and its current and former presidents, and its strategic consultants and spokesmen, for making and publishing knowingly false and defamatory statements about him as set forth herein causing him to suffer personal and professional humiliation, the destruction of his career with the attendant loss of earnings and income, anxiety, stress and other emotional pain and suffering.

Jurisdiction

2. This Court has jurisdiction over plaintiff's claims pursuant to D.C. Code Section 11-921, the actions complained of having taken place within the District of Columbia, which is where plaintiff worked for defendant AIPAC.

Parties

3. Plaintiff is Steven J. Rosen, a citizen of the United States and a resident of Maryland, worked for the American Israel Public Affairs Committee for a total of just short of 23 years (1982-2005), as its Director of Research and Information and later as its Director of Foreign Policy Issues reporting to the organization's Executive Director and its Board of

Directors, which includes its President and all its Past Presidents. He was terminated involuntarily by AIPAC's Board of Directors on March 21, 2005.

4. Defendant American Israel Public Affairs Committee, known by the acronym "AIPAC", is a not-for-profit corporation that is incorporated under the laws of the District of Columbia, where it is headquartered. Its purpose is to build and enhance a close relationship between the United States and the State of Israel on behalf of citizens of the United States who believe that such a relationship serves the American national interest. AIPAC does its work through education, advocacy and political activity. While it has regional offices elsewhere in the United States, its principal place of business is within the District of Columbia, where both plaintiff and its Executive Director maintained their offices.

5. Defendant Howard Kohr, a citizen and resident of the Commonwealth of Virginia, is presently and was at the time the claims made herein arose the Executive Director of AIPAC. He works out of its headquarters in the District of Columbia.

6. Defendant Melvin A. Dow, a citizen and resident of the State of Texas, is presently and was at the time the claims made herein arose a past President of AIPAC and member of its Board of Directors. Moreover, at the time the claims made herein arose, Mr. Dow was the Chairman of the "Advisory Group" of the AIPAC Board of Directors that was created to advise the Board concerning matters relating to allegations about plaintiff in connection with an ongoing government investigation.

7. Defendant Bernice Manocherian, a citizen and resident of the State of New York, was the President of AIPAC from 2004 to 2006 and Chairman of its Board of Directors from 2006 to 2008, during which period many of the defamatory statements complained of herein

were made and published. She is and was a permanent member of AIPAC's Board of Directors. On information and belief, Ms. Manocherian was also a member of the aforementioned "Advisory Group" of the AIPAC Board of Directors chaired by defendant Dow.

8. Defendant Howard E. Friedman, a citizen and resident of the State of Maryland, is the current Chairman of AIPAC's Board of Directors and was its President during the period 2006-2008, during which many of the defamatory statements complained of herein were made and published. He is and was a permanent member of AIPAC's Board of Directors. On information and belief, Mr. Friedman was also a member of the aforementioned "Advisory Group" of the AIPAC Board of Directors chaired by defendant Dow.

9. Defendant Lawrence Weinberg, a citizen and resident of the State of California, is a past President of AIPAC and served as a permanent member of its Board of Directors when the defamatory statements complained of herein were made and published. On information and belief, Mr. Weinberg was also a member of the aforementioned "Advisory Group" of the AIPAC Board of Directors chaired by defendant Dow.

10. Defendant Robert H. Asher, a citizen and resident of the State of Illinois, is a past President of AIPAC and served as a permanent member of its Board of Directors when the defamatory statements complained of herein were made and published. On information and belief, Mr. Asher was also a member of the aforementioned "Advisory Group" of the AIPAC Board of Directors chaired by defendant Dow.

11. Defendant Edward C. Levy, Jr, a citizen and resident of the State of Michigan, is a past President of AIPAC and served as a permanent member of its Board of Directors when the defamatory statements complained of herein were made and published. On information and

belief, Mr. Levy was also a member of the aforementioned "Advisory Group" of the AIPAC Board of Directors chaired by defendant Dow.

12. Defendant Lionel Kaplan, a citizen and resident of the State of New Jersey, is a past President of AIPAC and served as a permanent member of its Board of Directors when the defamatory statements complained of herein were made and published. On information and belief, Mr. Kaplan was also a member of the aforementioned "Advisory Group" of the AIPAC Board of Directors chaired by defendant Dow.

13. Defendant Timothy F. Wuliger, a citizen and resident of the State of Ohio, is a past President of AIPAC and served as a permanent member of its Board of Directors when the defamatory statements complained of herein were made and published. On information and belief, Mr. Wuliger was also a member of the aforementioned "Advisory Group" of the AIPAC Board of Directors chaired by defendant Dow.

14. Defendant Amy Rothschild Friedkin, a citizen and resident of the State of California, is a past President of AIPAC and served as a permanent member of its Board of Directors when the defamatory statements complained of herein were made and published. On information and belief, Ms. Friedkin was also a member of the aforementioned "Advisory Group" of the AIPAC Board of Directors chaired by defendant Dow.

15. Defendant Patrick M. Dorton, a citizen and resident of the State of Maryland, was at all times relevant to the claims contained herein an employee of, and a principal in, Rational PR, a public relations firm doing business in the District of Columbia, and as such, was at all time relevant to the claims contained herein the official designated spokesman for AIPAC, its officers and its Board of Directors, with respect to the matters related to such claims. In this

capacity, he personally issued most of the defamatory statements on behalf of AIPAC and its Board of Directors.

16. Defendant Rational PR, L.C., is a limited liability company organized under the laws of the District of Columbia. Its principal place of business is located at 1155 15th Street, NW, Suite 614, Washington, DC 20005. On information and belief it is contracted to provide strategic advice and strategy to AIPAC concerning the management of public statements about plaintiff, and the publication of such statements. In this effort, its employs defendant Dorton, one of its principals, who has been authorized to make public statements on behalf of AIPAC and its Board of Directors about plaintiff, and has made such public statements.

Statement of Facts

17. Until his involuntary termination on March 21, 2005, plaintiff Steven J. Rosen was employed by AIPAC as its Director of Foreign Policy Issues. In that role he worked in close daily consultation with AIPAC's Executive Director, its President, and senior members of its Board of Directors for some 23 years. Plaintiff's primary responsibility while working for AIPAC was to obtain information about policy issues and decisions in the Executive Branch of the United States Government, especially, the National Security Council, the State Department and the Department of Defense. He was expected to and did brief AIPAC's Executive Director, its President, and its Board of Directors about such information on a continuing, often daily basis. In this role Mr. Rosen was known internally and outside the AIPAC organization to be intimately involved with AIPAC's Executive Director, its President, and its Board of Directors on all foreign policy matters.

-7-

18. To be effective, organizations engaged in advocacy in the field of foreign policy need to have earlier and more detailed information about policy developments inside the government and diplomatic issues with other countries, than is normally available to or needed by the wider public. Agencies of the government sometimes choose to provide such additional information about policy and diplomatic issues to these outside interest groups in order to win support for what they are doing among important domestic constituencies and to send messages to select target audiences. To control the flow of such information, government agencies in the field of foreign policy have designated individuals with the authority to determine and differentiate which information disclosures would be harmful to the United States, and which disclosures would benefit the United States through the work of their agencies and would not be harmful to the United States. To maintain liaison with these authorized agency officials who at times are willing to provide such information, organizations like AIPAC have designated officials of their own who have the requisite expertise and relationships to deal with government foreign policy agencies. At AIPAC, Steven Rosen was one of the principal officials who, along with Executive Director Howard Kohr and a few other individuals, were expected to maintain relationships with such agencies , receive such information, and share it with AIPAC Board of Directors and its Senior Staff for possible further distribution. AIPAC, and those defendants who were AIPAC officials and/or members of its Board of Directors, knew that Mr. Rosen and others at AIPAC were receiving such information and expected that they would share it with them.

19. As a regular part of his job, Mr. Rosen was expected to obtain and share with AIPAC's Executive Director, its President, and its Board of Directors such information

concerning the foreign policy of the United States and other countries as described in paragraph no. 18 above. Mr. Rosen was highly successful in his job, and was regularly praised and generously rewarded by AIPAC's Executive Director, its President, and its Board of Directors, including by those named as defendants herein who are and/or who were in those positions, for obtaining and sharing such information as described in paragraph no. 18 above. Indeed, at the time it was shared with them, AIPAC's Executive Director, its President, and its Board of Directors, including those named as defendants herein who are and/or who were in those positions, were well aware of the nature of the information obtained by Mr. Rosen as described in paragraph no. 18 above. Being so aware, they would often share that same information with others outside of AIPAC, particularly valuing Mr. Rosen for his ability to provide them with such information. In fact, AIPAC's Executive Director, its President, and its Board of Directors, including by those named as defendants herein who are and/or who were in those positions, as well as others on AIPAC's staff, also obtained and shared with each other, and with others outside AIPAC, such information as described in paragraph no. 18 above, and did so on a regular basis quite apart from the information obtained and shared with them by Mr. Rosen.

20. With the exception of Rational PR, L.C. and Patrick Dorton, all defendants knew of plaintiff's role and were from time to time privy to the extensive information as described in paragraph no. 18 above that he obtained and provided to AIPAC over many years, because each was personally briefed by Mr. Rosen both individually and collectively. In fact, each of these defendants, other than Mr. Kohr, had been a president of AIPAC for a minimum of two years and as such was personally and repeatedly briefed by Mr. Rosen about the information he obtained as described in paragraph no. 18 above. Mr. Kohr, as AIPAC's Executive Director,

was intimately involved with Mr. Rosen on a daily, indeed, hourly, basis, and was fully knowledgeable about such information as described in paragraph no. 18 above that Mr. Rosen obtained for AIPAC. Moreover, prior to becoming AIPAC's Executive Director, and Mr. Rosen's immediate supervisor, Mr. Kohr had been Mr. Rosen's deputy with the title "Director of Executive Branch Relations." His specific responsibility in that position was to obtain information of the type described in paragraph no. 18 above from the U.S. Departments of State and Defense and the National Security Council – the responsibilities that Mr. Rosen took over when Mr. Kohr became AIPAC's Executive Director and his (Mr. Rosen's) immediate boss.

21. On August 27, 2004, it was publicly revealed that the U.S. Department of Justice was engaged in an investigation of Steven Rosen and another AIPAC employee for receiving information that they allegedly were "not authorized to receive." This allegation was not true, and initially AIPAC responded by asserting that Mr. Rosen (and other employee) had done nothing wrong. Thereafter, Mr. Rosen continued to perform his job duties at AIPAC, and he continued to be highly praised for his work by its Executive Director, defendant Howard Kohr, its then President, Bernice Manocherian, and its Board of Directors, which included defendants Melvin Dow, Howard Friedman, Lawrence Weinberg, Robert Asher, Edward Levy, Lionel Kaplan, Timothy Wuliger, and Amy Rothschild Friedkin, all of whom are former presidents of AIPAC. Indeed, on January 31, 2005, five months after the Justice Department's ongoing investigation had been made public, AIPAC awarded Mr. Rosen a special job performance bonus of $7,000.

22. On February 17, 2005, only two weeks after awarding Mr. Rosen the special bonus for excellence in job performance, the AIPAC Board of Directors placed him on

involuntary administrative leave, immediately after receiving threats from the Justice Department. These threats were made in a meeting between AIPAC's counsel and its Executive Director Howard Kohr and federal prosecutors on February 15, 2005. In that meeting, the lead federal prosecutor stated that, "We could make real progress and get AIPAC out from under all of this," if AIPAC showed more cooperation with the government. On February 16, 2005, AIPAC's counsel said that the lead federal prosecutor "is fighting with the FBI to limit the investigation to Steve Rosen and [another AIPAC employee] and to avoid expanding it." This warning implied that AIPAC's Executive Director and the AIPAC organization as a whole could become targets of the Justice Department's investigation if AIPAC did not act against Mr. Rosen (and the other employee). The decision to place Mr. Rosen on involuntary leave was made in response to these threats from the Department of Justice. On February 19, 2005, one of AIPAC's attorneys told Mr. Rosen's counsel that

> the [AIPAC] Advisory Committee in particular and the [AIPAC] Board [of Directors] as well, quite reluctantly, agreed to take a step in the direction of the government, in the hope that the government would reciprocate in some fashion . . . Placing . . . Steve on leave . . . [is a] significant concession.

On the same day, another of AIPAC's attorneys stated:

> There was very vocal sentiment against taking even the first step of removing Steve . . . from [his] office, but a majority favored that action to demonstrate to [the lead federal prosecutor] that we are serious and want him now to take the next step [*i.e.*, relieving AIPAC of any chance of being a target of Justice Department's investigation].

Taking exception to his being placed on involuntary leave, Mr. Rosen protested his innocence. Indeed, on March 10, 2005, Mr. Rosen sent a letter to each member of the AIPAC Board of Directors, including defendants Kohr, Dow, Friedman, Manocherian, Weinberg, Asher, Levy,

Wuliger, Kaplan, and Friedkin, reminding them of the hundred of times he had briefed the Board, and the thousands of times he had briefed AIPAC's presidents and executive directors, with information he had obtained of the type described in paragraph no. 18 above. This activity was not only well-known to these defendants, but was approved and rewarded as among the most valued of Mr. Rosen's regular job duties. Mr. Rosen's letter detailed the fact that others, including all Executive Directors — defendant Howard Kohr being among them — and other members of AIPAC's senior staff, also regularly engaged in obtaining information of the type described in paragraph no. 18 above, which they shared with AIPAC's presidents and its Board of Directors. This was normal practice at the organization.

23. On March 18, 2005, the lead federal prosecutor told AIPAC through its counsel that placing Mr. Rosen on involuntary administrative leave was not enough, and that AIPAC needed to terminate his employment altogether if it wanted to obtain the good will of the Justice Department with regard to the investigation. In short, the federal prosecutors insisted that, at this point and thereafter, if AIPAC wanted to be viewed as cooperative – and thereby avoid the risk of itself becoming a target of the criminal investigation – it would have to conform its conduct to the dictates of the so-called "Thompson Memorandum" – a January 20, 2003 Justice Department document entitled "Principles of Federal Prosecution of Business Organizations" which sets forth the criteria under which the Department determines whether or not to prosecute a corporation for the alleged misdeeds of its employees. Prominent among these Thompson Memorandum criteria are the firing of the corporate employees who allegedly engaged in the wrongdoing, condemning their actions publicly, ending payments toward their legal costs, and denying them substantial severance payments. Shortly after this meeting with Justice

Department officials, AIPAC took all the steps required under the Thompson Memorandum with regard to Mr. Rosen, and did so with the approval of its Board of Directors upon the recommendation of the so-called Advisory Group that had been set up by AIPAC's Board of Directors to advise it concerning matters relating to the allegations about Mr. Rosen in connection with the ongoing government investigation. These steps were taken in the hope that AIPAC would benefit by avoiding prosecution. Except for defendant Patrick Dorton and his company, defendant Rational PR, L.C., the defendants in this action and the rest of AIPAC's Board of Directors knew absolutely that Steven Rosen had done nothing wrong, indeed, nothing which they had not known about and authorized. They had approved and rewarded the very behavior which they now condemned in order to obtain favored treatment from the Justice Department. In fact, defendant Howard Kohr and the several AIPAC presidents named as defendants herein, had themselves each received information of the type described in paragraph no. 18 above, and shared it with others both inside and outside of AIPAC, independent of Mr. Rosen. On Monday, March 21, 2005, the very next business day after the lead federal prosecutor warned AIPAC to conform to the dictates of the Thompson Memorandum or risk prosecution, AIPAC fired Mr. Rosen. AIPAC's attorney told Mr. Rosen's counsel that, while AIPAC did not believe that Mr. Rosen had committed any crime or wrongdoing, he was being fired in order to give AIPAC "credibility" with the government. Indeed, at that point, AIPAC's attorney said that AIPAC still hoped to keep Mr. Rosen on its payroll. Officially, AIPAC thereafter informed Mr. Rosen through his attorney that his employment was summarily terminated (after 23 years of loyal and highly praised service), without stating a reason for taking such adverse action nor providing him with an opportunity to respond to any allegations of wrongdoing. Immediately

after summarily firing Mr. Rosen, AIPAC's counsel and the attorney representing Howard Kohr, AIPAC's Executive Director, contacted federal prosecutors and informed them of the summary firing of Mr. Rosen by AIPAC. On August 4, 2005, the day the federal prosecutors obtained an indictment of Mr. Rosen from a federal grand jury in Alexandria, Virginia, AIPAC was rewarded for its "cooperation" when the U.S. Attorney for the Eastern District of Virginia said that

> AIPAC as an organization has expressed its concern on several occasions with the allegations against Rosen and [the other employee indicted], and . . . it did the right thing by dismissing these two individuals.

24. Beginning shortly after summarily terminating Mr. Rosen's employment, AIPAC, and particularly defendants Kohr, Dow, Friedman Manocherian, Weinberg, Asher, Levy, Wuliger, Kaplan, and Friedkin, acting through and with the advice of defendants Rational PR, L.C., and its principal and employee defendant Patrick Dorton, began making knowingly false and defamatory statements to the press about Mr. Rosen, and have continued to make and publish such knowingly false and defamatory statements about Mr. Rosen through March 3, 2008, and thereafter. The first such statement to be published appeared in the New York Times on April 21, 2005, and quoted defendant Dorton as AIPAC's official spokesman, stating that Rosen was fired because his actions differed from "the conduct that AIPAC expects from its employees." The July 7, 2005 issue of the New Yorker magazine quoted AIPAC spokesman Patrick Dorton that "Rosen [and his colleague] were dismissed because they engaged in conduct that was not part of their jobs, and because this conduct did not comport with the standards that AIPAC expects and requires of its employees." This was knowingly false and defamatory and issued in reckless disregard of the harm to Mr. Rosen. At no time in the 23 years Mr. Rosen was

employed by AIPAC did the organization provide in writing or orally any guidance or standards that he and other employees were expected to follow, regarding the receipt and sharing of information that might be offered by government officials. No expressed standards existed at AIPAC. Moreover, the implied standards that were embodied in the organization's normal practices over these decades, were completely consistent with Mr. Rosen's behavior. Accordingly, the repeated statements by AIPAC through its spokesmen that Mr. Rosen's conduct did not comport with AIPAC standards were knowingly false and defamatory. Such false and defamatory statements were repeated often by Dorton on behalf of AIPAC and its Board of Directors, including defendants Kohr, Dow, Friedman Manocherian, Weinberg, Asher, Levy, Wuliger, Kaplan, and Friedkin. For example: (1) in the New York Times on April 21, 2005; (2) in New Yorker Magazine on July 7, 2005; (3) in the Jewish Telegraphic Agency on August 4, 2005, (4) in the Jewish Telegraphic Agency on August 5, 2005; (5) in the New York Jewish Week on August 17, 2005; (6) in the Washington Post on November 12, 2005; (7) The Forward on December 23, 2005; (8) in the Baltimore Sun on March 8, 2006; (9) the Washington Post on April 21, 2006; (10) in the Jerusalem Post on June 29, 2006; (11) in the Jewish Telegraphic Agency on July 19, 2006; (12) in the Jewish Telegraphic Agency on March 27, 2007; (13) in the Jerusalem Report magazine on August 17, 2007; (14) in the Washingtonian Magazine of January 2008; (15) in the New York Times on March 3, 2008; and (16) to a reporter from The Forward on October 14, 2008. As it appeared in the New York Times on March 3, 2008, within a year of the filing of this civil action:

> The AIPAC spokesman on the Rosen [and the other employee] matter, Patrick Dorton, said at the time that the two men were dismissed because their behavior

30. On November 12, 2005, the Washington Post noted that AIPAC "[s]pokesman Patrick Dorton would say only that Rosen [and the other AIPAC employee involved] were fired for unauthorized activities." In fact, Steven Rosen engaged in no activities that were not fully known to and authorized by AIPAC, its Executive Director and its Board of Directors.

31. All the above-quoted statements were made at the urging and authorization of defendants, and each of them, and were knowingly and intentionally false and defamatory with respect to Steven Rosen, and it was known by defendants that such statements would cause him economic injury as well as personal and professional humiliation and injury and emotional harm.

32. At the same time, defendants sought to gain a distinct economic advantage for AIPAC by making false and defamatory statements about Mr. Rosen. In fact, through their publication of the falsehoods about Mr. Rosen, defendant achieved an increase of millions of dollars in revenue for AIPAC, whereas had they told the truth, AIPAC might well have suffered a significant decrease in fund-raising, as well as an increase in legal costs.

Statement of Claims

Defamation (Libel and Slander):

33. Since April 21, 2005 and continuing thereafter through at least March 3, 2008, defendant AIPAC and defendant Howard Kohr, its Executive Director, through its spokesman defendant Dorton, and otherwise, on the authority of defendants Kohr, Dow, Friedman Manocherian, Weinberg, Asher, Levy, Wuliger, Kaplan, and Friedkin, and with their personal knowledge and consent, and with the strategic advise of defendant Rational PR and its principal defendant Dorton, have knowingly and intentionally, and maliciously, made and published false and defamatory statements in writing and orally regarding plaintiff Steven J. Rosen as exemplified in paragraph nos. 26 through 32 above, which statements all defendants knew to be false and injurious to plaintiff of their own respective personal knowledge.

34. The making and publication of the false and defamatory statements regarding plaintiff referenced in paragraph no. 33 above was intentionally, willfully, wantonly, and maliciously done by defendants, and each of them.

35. The proximate result of defendants' conduct in making and publishing the false and defamatory statements concerning plaintiff as referenced herein has been plaintiff suffering and continuing to suffer personal and professional humiliation, career damage, damage to his personal and professional reputation, mental and emotional distress, and loss of income and earnings and other financial losses.

36. Moreover, in making their false and defamatory statements about Mr. Rosen as noted above, defendants, and each of them, also knew that these statements might influence a jury that will hear the misdirected case brought against him by the government, and might cause such a jury more likely to believe that Mr. Rosen had done something wrong (which he had not), thereby increasing the chances that he would be improperly convicted of a crime that he did not commit. Thus, defendants' knowing and intentional publication of false and defamatory statements about Mr. Rosen caused him the additional injury that results from pre-trial publicity in a criminal case, thereby placing him, an innocent man, in a danger zone of potentially grievous harm.

Prayer for Relief

Plaintiff respectfully requests that this Court enter judgment for him and against defendants and each of them, and:

(a) enter judgment for plaintiff and against defendants and each of them;

(b) award compensatory damages against defendants jointly and severally in the amount of $5,000,000.00, plus interest thereon;

(d) award punitive damages against defendant AIPAC in the amount of $10,000,000.00, plus interest thereon;

(e) award punitive damages against each other defendant separately in the amount of $500,000.00, plus interest thereon;

(f) enjoin defendants, and each of them, from further defaming plaintiff in the future;

(g) award plaintiff his costs of this action; and

(h) award such other relief and further relief against defendants as this Court may deem just and appropriate.

Jury Demand

Plaintiff hereby requests a trial by jury on all issues of fact and as to the amount of an award of damages, both compensatory and punitive.

Respectfully submitted,

David H. Shapiro
Bar No. 961326
SWICK & SHAPIRO, P.C.
1225 Eye Street, NW
Suite 1290
Washington, DC 20005
Tel. (202) 842-0300
FAX (202) 842-1418
email - dhshapiro@swickandshapiro.com

Attorney for Plaintiff

VERIFICATION

I hereby verify under pain and penalty of perjury that the facts contained in the foregoing Complaint are true and correct to the best of my knowledge, information, belief and recollection.

March 2, 2009
Date

Steven J. Rosen

Motion to Dismiss: US v. Rosen and Weissman

IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA	)	CRIMINAL NO. 1:05CR225
	)	
v.	)	(Hon. T. S. Ellis III)
	)	
STEVEN J. ROSEN,	)	
	)	
KEITH WEISSMAN,	)	
	)	
Defendants.	)	

MOTION TO DISMISS SUPERSEDING INDICTMENT

The United States of America, by its undersigned attorneys, respectfully submits this Motion pursuant to Rule 48(a), Fed. R. Crim. P., to Dismiss Counts One and Three of the Superseding Indictment currently pending against the defendants.

The Attorney General's Guidelines for Prosecutions Involving Classified Information require, *inter alia*, that the government consider the likelihood that classified information will be revealed at trial, any damage to the national security that might result from a disclosure of classified information, and the likelihood that the government would prevail at trial. These considerations are not static; they require assessment and reassessment by the Government throughout the pendency of a case.

The landscape of this case has changed significantly since it was first brought. The pleadings filed in this Court and in the Court of Appeals for the Fourth Circuit document the Government's disagreement with some of the legal rulings in this case. In addition to adjusting to the requirement of meeting an unexpectedly higher evidentiary threshold in order to prevail at trial, the Government must also assess the nature, quality, and quantity of evidence - including

information relevant to prosecution and defense theories expected at trial. In the proper discharge of our duties and obligations, we have re-evaluated the case based on the present context and circumstances, and determined that it is in the public interest to dismiss the pending superseding indictment.

Wherefore, based on the foregoing information, the government respectfully requests that Counts 1 and 3 of the superseding indictment be dismissed with prejudice.

Respectfully submitted,

Dana J. Boente
Acting United States Attorney

By: James L. Trump
James L. Trump
Assistant United States Attorney

W. Neil Hammerstrom, Jr.
Assistant United States Attorney

Thomas Reilly /by JLT
Thomas Reilly
Trial Attorney
U.S. Department of Justice

Filed: May 1, 2009

United Nations Children's Fund Prohibition of Leviev Funding

OFFICE OF THE EXECUTIVE DIRECTOR

United Nations Children's Fund
Three United Nations Plaza
New York, New York, 10017

Telephone 212 326 7035
Facsimile 212 326 7758
www.unicef.org

19 June 2008

Adalah-NY
Adalah-NY@mideastjustice.org

Adalah- New York:

I am pleased that your representatives were able to meet with my colleague Peter Mason and me yesterday afternoon, as a follow up to our April meeting about your letter to the Executive Director.

Since the April meeting, your colleagues have met with UNICEF officials in country and I am pleased that discussion was useful. The situation of children and women is the primary focus of UNICEF's work and interest.

Yesterday we confirmed that UNICEF has concluded that it will not consider partnerships – direct or indirect – with Mr. Lev Leviev or any of his corporate entities, and will not accept financial or other support that we know is from him or his corporate entities. The concerned parts of the UNICEF family, including our national committees, have been advised of this.

Yours sincerely,

Chris de Bono
Senior Adviser, Communications
Office of the Executive Director

Section 301 of the 1974 Trade Act

I. OVERVIEW OF SECTION 301

Section 301 of the Trade Act of 1974, as amended (19 U.S.C. § 2411), is the principal statutory authority under which the United States may impose trade sanctions against foreign countries that maintain acts, policies and practices that violate, or deny U.S. rights or benefits under, trade agreements, or are unjustifiable, unreasonable or discriminatory and burden or restrict U.S. commerce.

II. SECTION 301 INVESTIGATION PROCEDURES

A. Initiation of Section 301 Investigation. A Section 301 investigation may be commenced in one of two ways:

1. An interested party files a petition with the U.S. Trade Representative (USTR) requesting an investigation of a particular practice of a foreign country (and USTR determines within 45 days that an investigation is appropriate); or

2. USTR self-initiates an investigation.

B. Publication of Initiation. USTR must publish its determination to initiate an investigation (or reasons for not initiating in the case of a petition) in the Federal Register.

C. Public Comments and Public Hearing. Where USTR initiates an investigation based on a petition, it must provide an opportunity for the public to comment, and hold a public hearing if requested.

D. Consultations with the Foreign Government. Upon initiation of an investigation, USTR must request consultations with the foreign government.

E. Formal Dispute Settlement. Where an investigation involves an alleged violation of a trade agreement (such as a World Trade Organization (WTO) agreement or the North American Free Trade Agreement (NAFTA)), USTR must follow the dispute settlement provisions set out in that agreement.

F. Conclusion of Investigation. USTR must conclude its investigation and make (and publish in the Federal Register) a determination of whether the foreign practice is actionable under Section 301 within 18 months after initiation of an investigation involving a trade agreement that includes a dispute settlement mechanism, or 30 days after conclusion of dispute settlement procedures, whichever comes first (or 12 months after initiation of an investigation in all other cases).

III. SECTION 301 ACTION

A. Mandatory Retaliatory Action. Where USTR determines that a foreign government is violating or denying U.S. rights or benefits under a trade agreement, or its acts, policies or practices are unjustifiable and burden or restrict U.S. commerce, Section 301 requires retaliation unless an exception applies.

1. Unjustifiable acts, policies and practices are those that violate, or are inconsistent with, the international legal rights of the United States, including denial of national treatment or most-favored-nation (MFN) treatment to U.S. exports, the right of establishment to U.S. enterprises or protection of intellectual property rights.

2. The requirement for mandatory retaliation may be waived where:

a. a WTO dispute settlement panel has found that the act, policy or practice does not violate, or deny U.S. rights under, a trade agreement;

b. USTR finds that the foreign country is taking satisfactory measures to comply with a trade agreement;

c. the foreign country has agreed either to eliminate or phase out the act, policy or practice, or to a satisfactory solution;

d the foreign country has agreed to provide the United States with compensatory trade benefits;

e. USTR finds "in extraordinary cases" that retaliatory action, would adversely impact the U.S. economy substantially disproportionate to benefits of such action; or

f. the action would cause serious harm to the national security of the United States.

B. Discretionary Retaliatory Action. Where USTR determines that a particular act, policy or practice of a foreign country is unreasonable or discriminatory and burdens or restricts U.S. commerce, it has discretion as to whether to take retaliatory action.

1. An act, policy or practice is considered to be unreasonable if it is unfair and inequitable, even if it does not violate the international legal rights of the United States.

2. Practices considered unreasonable include:

a. denial of fair and equitable opportunities for the establishment of enterprises;

b. denial of adequate and effective protection of intellectual property rights, even if the foreign country is in compliance with the WTO

Agreement on Trade-Related Aspects of Intellectual Property (TRIPS);

c. denial of fair and equitable market opportunities, including a foreign government's toleration of systematic anticompetitive activities by or among enterprises in the foreign country;

d. export targeting; and

e. denial of worker rights.

3. In determining whether a foreign practice is unreasonable, reciprocal opportunities in the United States for foreign nationals and firms must be considered.

4. Practices of a foreign country will not be treated as unreasonable if USTR determines that such practices are not inconsistent with the level of the country's economic development.

5. Discriminatory practices include acts, policies or practices that deny national or MFN treatment to U.S. goods, services or investment.

C. Scope of Authorized Retaliatory Action. Where USTR makes an affirmative determination that an act, policy or practice is actionable under Section 301, it may suspend or withdraw trade concessions, impose duties or other import restrictions, withdraw, limit or suspend benefits under the General System of Preferences, the Caribbean Basin Economic Recovery Act, or the Andean Trade Preference Act, and negotiate agreements to eliminate or phase out the act,policy or practice or provide compensation for trade distortion.

1. Retaliatory action may be taken against any goods or economic sector on a non-discriminatory basis or solely against the foreign country involved and without regard to whether such goods or economic sector were involved in the act, policy or practice that is the subject of the determination.

2. The retaliatory action must be devised to affect goods and services of the foreign country in an amount equivalent in value to the burden or restriction imposed on U.S. commerce by the foreign country.

3. Actions may be taken that are within the President's power with respect to trade in any goods or services, or with respect to any area of pertinent relations with the foreign country.

D. Development of Retaliatory Action. Where a determination is made to take retaliatory action, a damage estimate is prepared, assessing the level of damage to U.S. industry resulting from the foreign act, policy or practice, and proposed retaliation list is developed and published in the Federal Register, inviting public comments. A public hearing is normally held on the proposed list. Based on the public comments, a final

retaliation list is prepared, published and implemented.

E. Implementation of Retaliatory Action. USTR must implement the retaliatory action within 30 days of the determination, except in certain circumstances, including where substantial progress is being made in negotiations with the foreign country; or a delay is necessary or desirable to obtain U.S. rights or a satisfactory solution.

F. Termination of Retaliatory Action. Any action taken pursuant to Section 301 terminates automatically after 4 years unless the petitioner or other representative of the domestic industry requests continuation.

G. Carousel Retaliation. Based on a May 2000 amendment of the Section 301 provisions, USTR is required to review retaliation lists and to revise retaliation, in whole or in part, 120 days after its initial effective date, and every 180 days thereafter, in cases where a WTO member has failed to implement a WTO Dispute Settlement Body recommendation in a dispute settlement proceeding.

IV. "SPECIAL 301" (Section 1303 of Omnibus Trade and Competitiveness Act of 1988)

A. Description. Section 301 is designed to enhance the United States' ability to negotiate improvements in foreign intellectual property regimes.

B. Annual Review. By April 30 of each year, USTR must identify foreign countries that deny "adequate and effective" protection of intellectual property rights (IPR) or "fair and equitable market access" to U.S. persons

relying upon IPR protection.

1. USTR must designate as "priority foreign countries" those countries whose acts, policies or practices are "the most onerous or egregious" and have the greatest adverse impact on relevant U.S. products, and that have

not entered into, or are not making significant progress in, negotiations to provide adequate and effective IPR protection..

2. Countries not designated as "priority foreign countries" may be placed on "priority watch" or "watch" lists if their intellectual property laws or enforcement practices are of major concern to the United States.

3. A country may be identified as denying adequate and effective IPR protection, even if it is in compliance with the TRIPS Agreement.

C. Investigations of Priority Countries. USTR must normally self-initiate Section 301 investigations of the priority foreign countries within 30 days of identification, unless USTR determines that initiation of an investigation would be detrimental to U.S. economic interests. The procedural and other requirements of Section 301 authority generally apply to these cases, except that investigations must be concluded and determinations made on whether the measures are actionable within six months in cases where it does not consider a trade agreement to be involved (nine months are allowed for cases that are especially complicated or where the foreign government is taking appropriate action).

D. Affirmative Determination. An affirmative determination is treated as a Section 301 determination and the Section 301 provisions for retaliation apply.

V. "TELECOMMUNICATIONS 301" (Section 1377 of Omnibus Trade and Competitiveness Act of 1988)

A. Description. Its primary objective is to ensure that countries fulfill their commitments to open their telecommunications markets.

B. Annual Review of Trade Agreements. By March 31 of each year, USTR must review all trade agreements involving telecommunications products or services to determine whether the foreign country is in compliance with the terms of the agreement, or otherwise denies within the context of the agreement mutually advantageous market opportunities to U.S. telecommunications products and services.

C. 1377 Determination. An affirmative determination is treated as a violation of a trade agreement under Section 301, for which retaliation is mandatory and must be targeted at telecommunications products and

services of the foreign country involved, unless actions against other economic sectors would be more effective in achieving compliance with the agreement.

VI. "SUPER 301"

A. Authority. The Super 301 process was initially mandated by the Omnibus Trade and Competitiveness Act of 1988 (for a two-year period). It was re-instituted by Executive Order in 1994 for a two-year period, and extended in 1995 to calendar years 1996 and 1997. On April 1999, Super 301 was again re-instituted by Executive Order for the years of 1999-2001. It expired and has not been renewed.

B. Description. Super 301 required USTR to identify priority foreign country practices, the elimination of which were likely to have the most significant potential to increase U.S. exports. Within 90 days after identification of priority foreign practices, USTR was required to initiate Section 301 investigations of any priority practices identified in the report.