Petition under Section 301 of the Trade Act of 1974 for Suspension of the US-Israel Free Trade Area

Submitted by

The Institute for Research: Middle Eastern Policy, Inc.

Table of Contents

I. Introduction....5
- a. The Petitioner....5
- b. Statutory Basis for This Petition....5
  - TRIPS Section 7: Article 39 Protection of Undisclosed Information....6
- c. Petitioner's Economic Interest....6

II. 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....7

III. Complaint #2: Israeli Manufacturers Violate US IP through Military-Industrial Commercial Espionage....11
- 1996 US Defense Investigation Service Memo on Israeli Commercial Espionage....11
- US Defense Industry and Israeli Trips Violations....15

IV. Complaint #3: The Israeli Pharmaceutical Regulator and Industry Systemically Violate US IP....16

V. Complaint #4: Israeli Diamond Exports to the US Finance Overseas Crime....20

VI. Damage Assessment: American Jobs Loss....21
- American Jobs Loss to Israeli IP Violations 1999-2008....22

VII. Damage Assessment: Comparative Bilateral FTA Analysis....22
- 2005 US Australia FTA....23
- 2006 US Bahrain FTA....24
- 2006 US Chile FTA....24
- 2006 US Jordan FTA....25
- 2006 US Morocco FTA....25
- 2006 US Singapore FTA....26
- 1985 US Israel FTA....27

VIII. Conclusion....28

VI. Appendix....30
- Chronology of Israeli Paris Convention/TRIPs Violations 1984-2009....30
- 1/31/1984 USTR Letter to the ITC Chartering Investigation of US-Israel Free Trade Area....34
- 2/15/1984 Federal Register Notice Soliciting Industry Input into FTA Investigation....37
- 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....39
- 5/30/1984 Investigation Report Transmittal Letter from ITC Chair to President Reagan....51
- 8/3/1984 Washington Post Article "FBI Investigates Leak on Trade to Israel Lobby"....53
- 11/1/1984 U.S. Bromine Alliance letter of complaint to the ITC about Classified Report Leak....54
- 11/29/1984 ITC Letter to US Bromine Alliance Confirming Confidential Business Data Leaked from Classified Report....59
- 1/07/1985 Federal Register Notice Terminating Investigation....62
- 12/29/2008 ITC Denies FOIA Request for "Probable Economic Effect of Providing Duty Free Treatment for U.S. Imports from Israel, Investigation No. 332-180" based on FOIA exemptions for national security information, trade secrets and other nondisclosure provisions....64
- 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....67
- 03/2/2009 Steve Rosen Civil Suit Against AIPAC....69
- Section 301 of the 1974 Trade Act....90

Illustration Index

Illustration 1: Israeli Pharmaceutical Exports, Imports, and Net Revenue (US $ Billion)....17
Illustration 2: US Australia FTA Performance....22
Illustration 3: US Bahrain FTA Performance....22
Illustration 4: US Chile FTA Performance....23
Illustration 5: US Jordan FTA Performance....24
Illustration 6: US Morocco FTA Performance....24
Illustration 7: US Singapore FTA Performance....25
Illustration 8: US Israel FTA Performance....26

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 with trade, development and US Middle East policy formulation.

During spring of 1984 American trade associations, companies and industries provided input solicited by the International Trade Commission and US Trade Representative for 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 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 negatively altered the strategic and tactical military balance of power. US taxpayers subsidize the research and development for weapons that US servicemen and women have then had to face on the battlefield in the form of illicitly manufactured Israeli systems obtained by rogue states.

The American pharmaceutical industry has also faced systemic industry-government violations of IP rights in the form of an ongoing IP "trap" in which confidential clinical dossiers are misused. While US pharmaceutical industry representatives insisted that Israel remain on the USTR Priority Watch List for the past three 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 manufacturer 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 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 are indirectly subsidizing the research 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.

Since 1989 US-Israel trade has shifted from rough 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 embedded US-Israel FTA IP violations are 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 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 theft. LLD Diamonds Ltd., owned by Israeli-American Lev Leviev exported $417 million in diamonds in 2008. Leviev has been cited for rights abuses in Angola and Namibia where Leviev companies source rough diamonds, and also Palestinian human rights groups which have documented Leviev financing 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 finance LLD Diamond's illicit activities.

In summary, the 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 information that the American Israel Public Affairs Committee and Israel had no right to possess or utilize. The subsequent ongoing violations and negative outcomes for American stakeholders place this trade agreement in the column of the types of “failed programs” that President Obama has promised Americans he would reevaluate. IRmep does not join previous Section-301 petitioners for further investigations, consultations with the Israeli government, hearings or requests for WTO “process” compliance. Given the nature of the national security threat, regional impact and threat to rule of law, **this Section 301 petition provides evidence and rationale for suspending the US-Israel Free Trade Area as allowed for 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.**

I. 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 to reverse a string of 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 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."

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

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 workers 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 IP violations have had on American industry, workers, and IRmep's supporters. We seek to empower and give redress to American stakeholders victimized by the negative economic impact of ongoing IP violations inherent in the US-Israel FTA. The petitioner's secondary interest is reversing systemic enforcement malaise at the USTR and subversion of warranted trade law enforcement that has encouraged 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.

II. 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 for handling trade secrets and protecting 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.”

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

Israel Public Affairs Committee (AIPAC) testified on the alleged mutual benefits of the agreement and against any special exemption 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." [5]

Potential IP violations were already surfacing from concerned US companies. On May 2, 1984 Monsanto International expressed concerns about IP 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 high 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 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..."[6]

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

But Monsanto's concerns about IP arrived after the comment filing deadline, and was ignored. 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."[7]

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,

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

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."[8]

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 of 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..."[9]

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."[10]

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, if any measures were taken on safeguarding sensitive data or investigating the specifics of the leak to AIPAC and the government of Israel are currently unavailable. Now in private practice, in January of 2009 Dr. Paula Stern speculated the leak may have originated at the USTR. [11]

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..."[12]

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 clear. The record is clear that either ITC and/or

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

the USTR (or both) failed to adequately protect the IP rights of US industry by mishandling confidential business information contained in the report *Probable Economic Effect of Providing Duty Free 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 cons 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 was able to embed violations of IP into the agreement and its own industrial policy. In this sense, the agreement and negotiating process were the foundation 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 and considered so highly sensitive that neither will release it under FOIA. (See appendix)[13]

---

13 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

III. Complaint #2: Israeli Manufacturers Violate US IP through Military-Industrial Commercial 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 derived from American IP without proper compensation to American rights holders for their sunk development costs, proper incensing, 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 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:[14]

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.

14 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 action. Although laws protecting against US IP theft were already on the books, Congress passed 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 and ongoing use 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 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 recent prosecutions have attempted to stem IP leaks, giving priority to those that most threaten national security.

In 2006 an administrative judge at the Pentagon defended harsh new denials of security clearances for Americans with family in Israel over 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.[15]" While this sort of broad brush treatment is lamentable, detailed information about the IP thefts behind the new policy are legion.

The American Israel Public Affairs Committee (AIPAC) 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)" has continued to be a target for law enforcement affecting not only to the IP of American businesses but also national security information. In 2004 the news media began reporting on an FBI

15 Washington Times, June 27, 2006

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 plead guilty in October 2005 to revealing classified information and has been sentenced to 12 years in prison. Rosen and Weissman have not yet gone to trial—prosecutors intend 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. Rosen has now sued AIPAC for singling 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." [16]

> “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.”[17]

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

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

US Defense Industry and Israeli Trips Violations[18]

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 is 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.

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

IV. 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 three years (2006-2008) precisely because the Israeli government's discriminatory practices strongly resemble the systemization of th treatment US industries received during the 1984 leak of confidential US IP during the FTA negotiations. However in this instance the consolidation point for sensitive American IP is an Israeli regulatory agency, the Ministry of Health. The IP abuse is embedded in Israeli patent law, purposeful regulatory delays and diminished legal venues for victims 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 whose global sales are based on commercial data leaks and purposely weakened IP protection. Once again US consumers and taxpayers subsidize research and development that Israeli generic drug manufacturers capitalize upon. 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.[19]

19 Page 140-141, PhRMA “Special 301” Submission, 2005

American pharmaceutical companies and associations seeking redress in Israeli courts found that laws 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."[20]

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 been detached from US rights holders by the Israeli legal regime and regulator, and monetized by "free riding" Israeli manufacturers, commercializing IP in the US market.

20 Page 141, PhRMA "Special 301" Submission, 2005

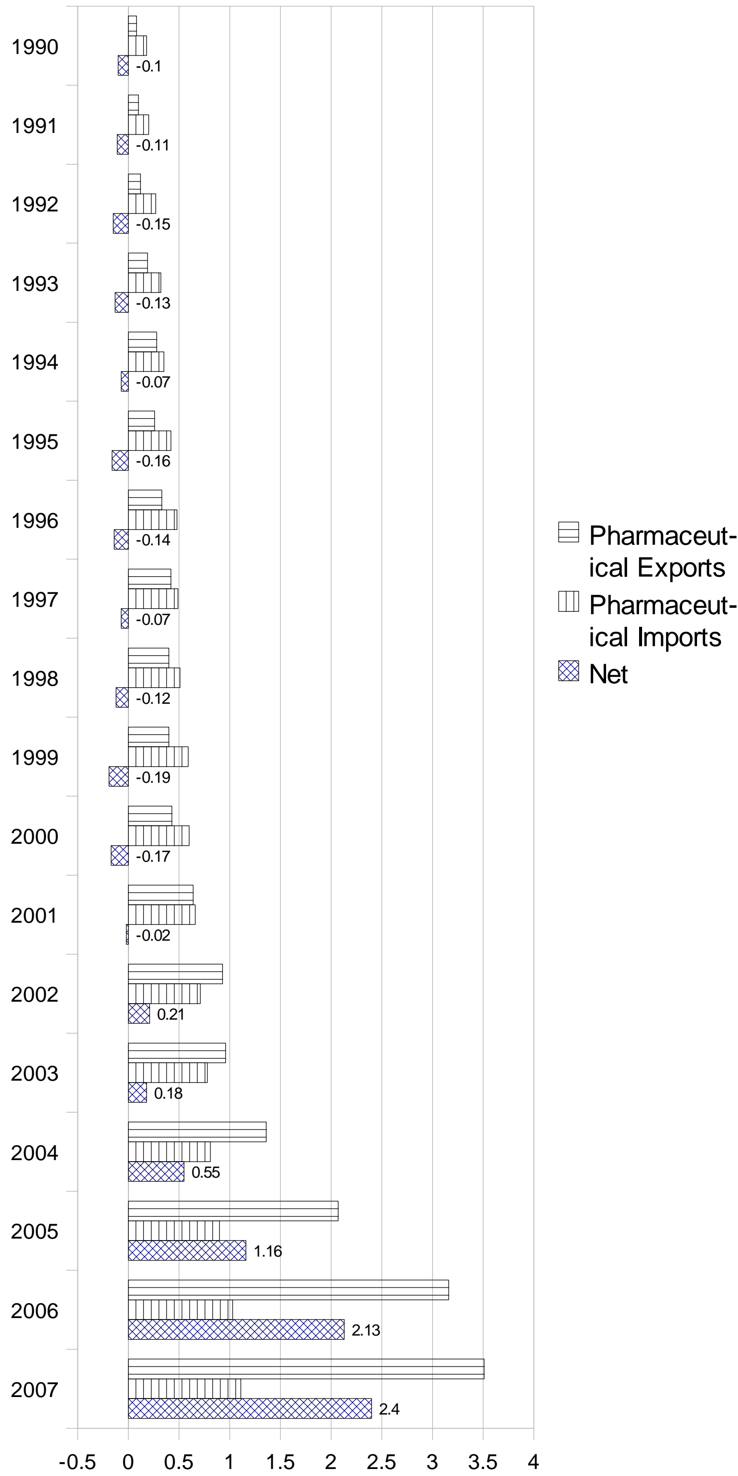

Illustration 1: Israeli Pharmaceutical Exports, Imports, and Net Revenue (US $ Billion) Source: WTO

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 has never recognized or acted upon the broader IP violations inherent in the US-Israel FTA nor has it obtained any quantifiable results against endemic Israeli pharmaceutical violations.

For its part, the Israeli government has been 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."[21]

Israel's failure to even recognize publicly known, documented and ongoing IP violations, combined with its hardening stance against the rights of US producers indicate that little progress will result from further USTR complaints, requests for comment, or formal WTO appeal processes. Real sanctions are clearly in order.

21 "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

V. Complaint #4: Israeli Diamond Exports to the US Finance Overseas Crime

Preferential access to the immense US market has facilitated acts against both US and international law as well as US policy regional 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 continue destabilize the Middle East by radicalizing and rallying opposition to the United States.

Tariff free access to the US market has increased the import of pearls, precious stones and metals from Israel on average 13% per year 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 Lev Leviev topping the list of exporters at $417 million.[22]

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 not partner with him or accept any contributions due to this ongoing illegal activity.

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” Liviev 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 and 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:

> “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 finances illegal activity while subsequently burdening the reputation of US industries creating jobs by doing business in other parts of the Middle East and Muslim world.

---

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

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.

VI. Damage Assessment: American Jobs Loss

The exploding US trade deficit with Israel is an anomaly among all other bilateral free trade agreements. It might be inexplicable absent the history of IP violations that facilitate and explain its explosive growth. In a time of economic downturn, violation of rules based trade threatens 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 impact 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[25] 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.

25 "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[26]		-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[27] bilateral FTAs produced a cumulative $21.6 billion surplus. If the deficit generated by the US-Israel FTA (-$7.8 billion) didn't exist, the bilateral FTA surplus would have been $29.4 billion, sustaining 471,850 FTA related direct and indirect jobs in the American economy.

VII. Damage Assessment: Comparative Bilateral FTA Analysis

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

> 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.[28]

However, unlike every other US bilateral free trade agreement, the US-Israel FTA delivers most benefits only to one party—Israel—by harming American corporations and workers through ongoing IP violations. This anomaly is quantitatively revealed in a comparison of every other active US bilateral FTA against the US-Israel FTA.

26 Baseline derived from "Exports from Manufacturing Establishments" The US Census Bureau, 2006
27 As indicated on the USTR website on 12/31/2008
28 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

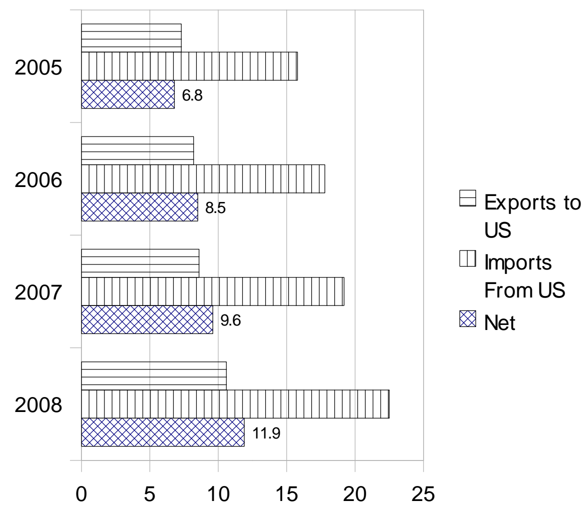

Illustration 2: US Australia FTA Performance, Source: US Census Bureau TradeStats Express

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

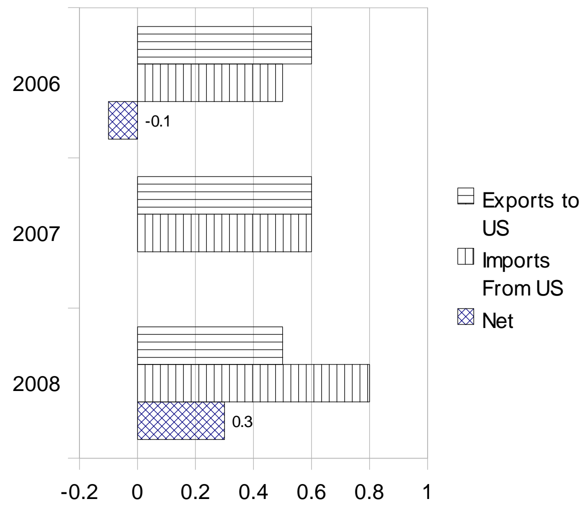

Illustration 3: US Bahrain FTA Performance
Source: US Census Bureau TradeStats Express

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

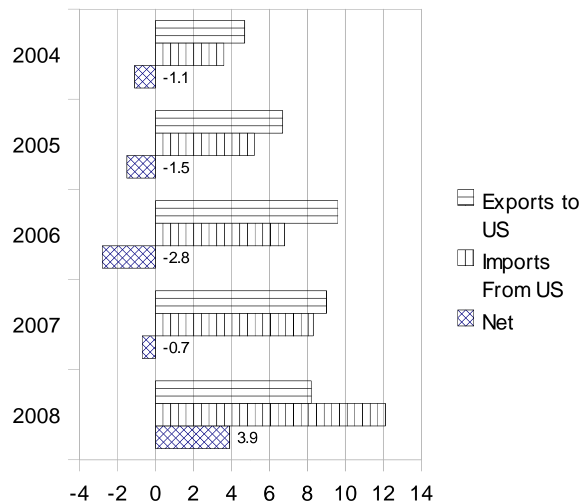

Illustration 4: US Chile FTA Performance
Source: US Census Bureau TradeStats Express

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

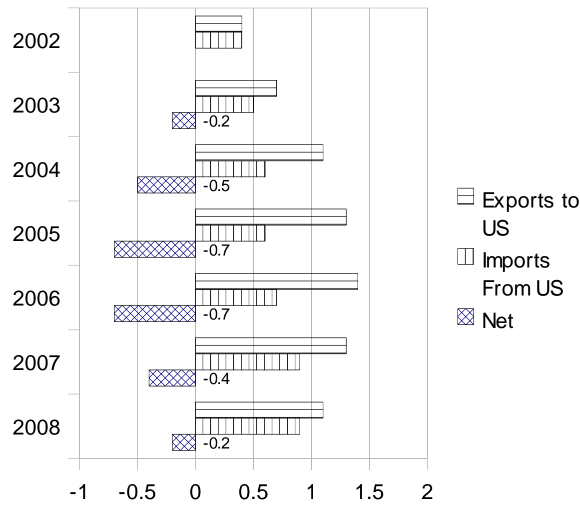

Illustration 5: US Jordan FTA Performance
Source: US Census Bureau TradeStats Express

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

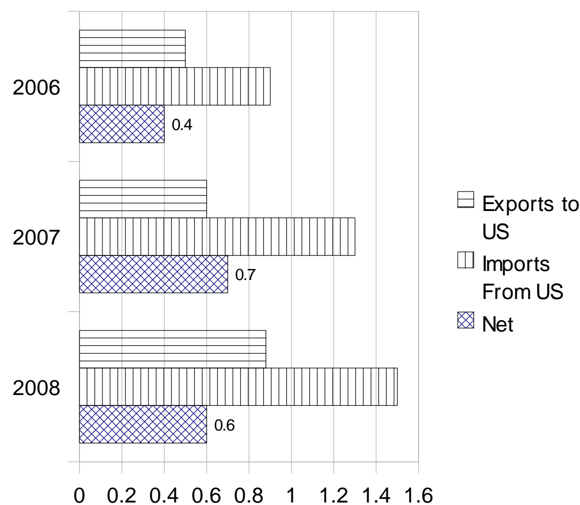

Illustration 6: US Morocco FTA Performance
Source: US Census Bureau TradeStats Express

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

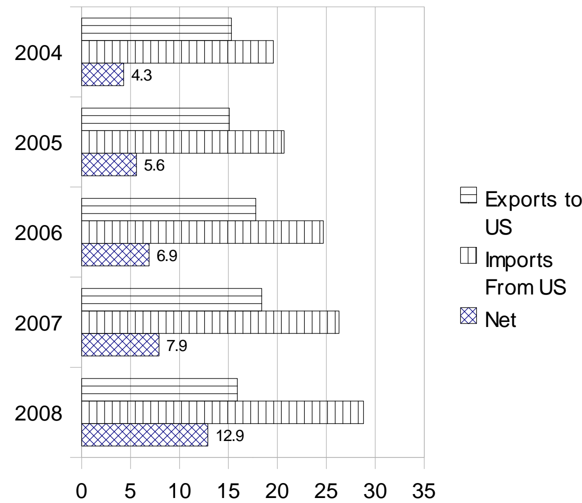

Illustration 7: US Singapore FTA Performance
Source: US Census Bureau TradeStats Express

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
Source: US Census Bureau TradeStats Express

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.

VIII. 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[29] relevant public information released under the Freedom of Information Act about the agreement's negotiations, and the subsequent IP misuse of sensitive industries 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).

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 political accountability (governance) inherent in such lax law enforcement has a direct and quantifiable impact on the future economic viability of a 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."[30]

President Obama has promised Americans that he would evaluate government programs and cancel any that are not producing positive results. The quantifiable 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:

29 Background Interviews with ITC staff – November and December, 2008

30 "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.”[31]

IRmep is not herein joining previous Section-301 or Special-301 claimants 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 in general. Rather, we urge the USTR under its “Scope of Authorized Retaliatory Action” to suspend all benefits toward eliminating or phasing out this act.[32] **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 be expected to produce an immediate economic stimulus as American manufacturers resume production of merchandise illicitly produced by Israeli corporations violating intellectual property through ongoing commercial espionage and purposefully inadequate regulatory regimes.

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