

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.

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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.**