RECENT DEVELOPMENTS

INTERNATIONAL TRADE—FREE TRADE AREAS—AGREEMENT ON THE ESTABLISHMENT OF A FREE TRADE AREA BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF ISRAEL

On August 19, 1985, the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (Agreement) entered into force.[1] The Agreement is the first such agreement concluded by the United States[2] and consists of a preamble, twenty-three articles, and four annexes, which are integral parts of the Agreement.[3] Under the terms of the Agreement, customs duties on all trade between the two countries are to be eliminated by January 1, 1995.[4] Additionally, the Agreement provides for the reduction or elimination of many nontariff barriers.[5]

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[1] Entry Into Force of U.S. - Isreal Free Trade Area Agreement, 50 Fed. Reg. 35,172 (1985). Formal negotiations towards concluding a free trade agreement began in mid-January 1984, following a November 29, 1983 agreement by President Reagan and Prime Minister Shamir to begin discussions on such an agreement. The negotiations concluded on February 26, 1985. On April 22, 1985 Ambassador William E. Brock, on behalf of the United States, and Minister Ariel Sharon, on behalf of Israel, signed the Agreement. Following the signing, the Agreement was submitted to Congress. HOUSE COMM. ON WAYS AND MEANS, REPORT ON UNITED STATES - ISRAEL FREE TRADE AREA, H.R. REP. NO. 64, 99th Cong., 1st Sess. 2 (1985) [hereinafter cited as HOUSE REPORT]. The Agreement quickly passed both houses of the Congress and was signed by President Reagan on June 11, 1985. *President Signs Legislation Implementing U.S. Free Trade Agreement With Israel*, 2 INT'L TRADE REP. 818 (BNA) (June 19, 1985).

[2] HOUSE REPORT, *supra* note 1, at 2. Israel had previously entered into a limited free trade agreement with the European Communities. *See infra* note 74. A free trade agreement is an arrangement between trading partners to eliminate duties and other restrictions on substantially all of the trade between them. D. JAMES & K. PATTERSON, GUIDE TO THE ISRAEL - U.S. FREE TRADE AREA AGREEMENT 33 (1985) (available from the Embassy of Israel in Washington, D.C. and the Government of Israel Trade Center in New York, New York) [hereinafter cited as GUIDE].

[3] Agreement on the Establishment of a Free Trade Area Between the Government of the United States of America and the Government of Isreal, *reprinted in* 25 I.L.M. 654 (1985) [hereinafter cited as Free Trade Agreement].

[4] *Id.* at 681.

[5] *Id.* at 654. *See infra* notes 18-61 and accompanying text.

I. TARIFF ELIMINATION

The Agreement eliminates customs duties in four stages.[6] The first stage provides for duty free treatment on September 1, 1985 on all products not covered in the other three stages.[7] Duties on products in the second stage are to be totally eliminated on January 1, 1989 by three successive tariff cuts.[8] Duties on products in the third stage will be eliminated in eight tariff cuts over a ten-year period.[9]

Duties on products in the fourth stage will experience no reduction until after January 1, 1990.[10] The rates of duty to be applied to these goods after that date shall be determined after consultations between the two governments.[11] The Agreement, however, obligates the United States and Israel to accord this category duty free treatment by January 1, 1995.[12]

Products protected by the United States in this fourth stage are: processed tomato products; certain categories of olives; dehydrated onions and garlic; citrus fruit juices; cut roses; certain bromine prod-

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[6] Due to the number of products covered by the Agreement, it is beyond the scope of this article to list the products contained in each of the four stages. Generally, the first stage covers those products about which the negotiators received no advice indicating particular sensitivity. Those products for which there may be a general sensitivity, but which are not likely to be produced competitively by the other country in the short term, are covered in the second stage. Products which are more sensitive in the context of bilateral trade between the two countries, but which were not identified as specifically sensitive, are included in the third stage. Finally, products specifically identified as sensitive are included in the fourth stage. Statement of Assistant United States Trade Representative Doral S. Cooper before the House Ways and Means Committee, United States House of Representatives, March 6, 1985 (available on file at *the Georgia Journal of International and Comparative Law*) [hereinafter cited as Statement].

[7] Free Trade Agreement, *supra* note 3, at 667-68.

[8] *Id.* at 667. In each case an initial duty reduction became effective September 1, 1985. This provides a new base rate for further duty reductions of 60 percent on January 1, 1987, and 40 percent (to zero duty) on January 1, 1989. *Id.*

[9] *Id.* at 667-68. These cuts will result from successive percentage reductions of the Tariff Schedule of the United States (TSUS) (column 1) and Tariff Schedule of Israel (TSI) rates of duty in effect on those eight dates. The cuts will take place as follows: (1) on September 1, 1985, a rate which is 80 percent of the then current TSUS and TSI duties on those products; (2) on January 1, 1986, a rate which is 70 percent of the then current duties; (3) on January 1, 1987, a rate which is 60 percent of the then current duties; (4) on January 1, 1988, a rate which is 50 percent of the then current duties; (5) on January 1, 1989, a rate which is 40 percent of the then current duties; (6) on January 1, 1990, a rate which is 30 percent of the then current duties; (7) on January 1, 1992, a rate which is 10 percent of the then current duties; and (8) on January 1, 1995, duty free treatment. *Id.* at 667-69.

[10] *Id.* at 668-69.

[11] *Id.*

[12] *Id.*

ucts; and certain gold jewelry.[13] Items protected by Israel are: certain horticultural products; unmanufactured tobacco; certain dairy products; refrigerators and refrigeration equipment; aluminum bars; and radio-navigational equipment.[14]

II. APPLICABILITY TO THE GATT

The Agreement does not replace the obligations of either Israel or the United States under the General Agreement on Tariffs and Trade (GATT).[15] Instead, the Agreement and the GATT are to be read together with regard to both tariff and nontariff barriers.[16] Unless specifically modified by the terms of the Agreement, GATT provisions will continue to apply to the commercial relations between the two countries.[17]

In addition to the new tariff regime, the Agreement deals with GATT provisions in four other areas: safeguards;[18] infant industries;[19] balance of payment remedies;[20] and specific duties.[21] Under article 5

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[13] *Id.* at 682.

[14] *Id.* at 683.

[15] The GATT originated with a meeting of 22 nations in 1947. The ensuing agreement contained commitments by each country to limit tariffs on particular items by the amount negotiated. The original agreement and institutional framework which arose from it have served as the basis for subsequent rounds of negotiations on tariffs and nontariff barriers. *See generally* J. JACKSON, LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS 396-440 (1977) (overview of the GATT).

[16] Free Trade Agreement, *supra* note 3, at 654.

[17] *Id.*

[18] *Id.* at 658. Article XIX of the GATT allows a nation to take action to provide relief to a domestic industry seriously injured or threatened with serious injury by the increased importation of a product. CONTRACTING PARTIES TO THE GENERAL AGREEMENT ON TARIFFS AND TRADE, 3 BASIC INSTRUMENTS AND SELECTED DOCUMENTS 41 (1958) [hereinafter cited as BASIC INSTRUMENTS]. *See generally* J. JACKSON, WORLD TRADE AND THE LAW OF GATT, ch. 23 (1969) (further information on safeguard action under the GATT).

[19] Free Trade Agreement, *supra* note 3, at 660. Article XVIII of the GATT recognizes that it may be necessary for contracting parties to take protective measures affecting imports to implement programs and policies of economic development. BASIC INSTRUMENTS, *supra* note 18, at 33-41.

[20] Free Trade Agreement, *supra* note 3, at 660. Under articles XII and XVIII of the GATT, a country may restrict the quantity or value of merchandise imported in order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its program of economic development. BASIC INSTRUMENTS, *supra* note 18, at 35-98. *See generally* JACKSON, *supra* note 18, ch. 26 (additional information on balance of payment problems and the GATT).

[21] Free Trade Agreement, *supra* note 3, at 665-66. Specific duties are tariffs expressed in absolute numbers rather than as percentages, such as 10 cents per pound. This approach is in contrast to ad valorem duties, which are expressed as a percentage of the product value (e.g., 15 percent of the fob value). GUIDE, *supra* note 2, at 33, 36. Under article II of the GATT, a contracting party may adjust

of the Agreement, a party may take safeguard actions affecting the trade between the two countries if "a product is being imported in such increased quantities as to be a substantial cause of serious injury or the threat thereof to domestic producers . . . ."[22] Neither party, however, can suspend the reduction or elimination of any duty provided for under the Agreement unless the serious injury or threat complained of results directly from the elimination or reduction of a duty under the Agreement.[23]

Article 10 provides that Israel may raise customs duties up to twenty percentage points above the level that would otherwise be in effect under the Agreement, if such an increase is necessary to develop new industries.[24] Within twenty-four months after raising tariffs under this article, however, Israel must reduce them by not less than five percent per year.[25] All such duties must be abolished by January 1, 1995.[26]

Either party, under article 11, may apply temporary trade measures when a serious balance of payments problem exists.[27] These measures must be used only to provide time for macroeconomic adjustment measures to take effect and may not be used to protect individual industries or sectors.[28] The article limits such measures to import surcharges, import deposits, or quantitative restrictions.[29] The article allows quantitative restrictions only when the other two measures would be inadequate.[30]

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the specific duties charged on imports whenever the par value of that party's currency has declined by more than 20 percent. Such an adjustment is allowed provided that the other contracting parties concur that such an adjustment will not impair the value of the concessions made under the GATT. BASIC INSTRUMENTS, *supra* note 18, at 7.

[22] Free Trade Agreement, *supra* note 3, at 658.

[23] *Id.* at 658-59. Additionally, the party taking the action "may except the product of the other country from any import relief that may be imposed with respect to imports of that product from third countries." *Id.* at 659.

[24] *Id.* at 660. These protective measures are applicable only to industries not already existing in Israel at the time the agreement entered into force and are allowed provided the imports affected do not compose more than 10 percent of the total value of Israel's imports from the United States in 1984. *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.*

[29] *Id.* Import surcharges are duties in addition to regular duties, usually imposed temporarily to alleviate balance of payment problems. GUIDE, *supra* note 2, at 34. Import deposits are payments made upon entry of imports, often designed to ensure future payment of duties due. *Id.*

[30] Free Trade Agreement, *supra* note 3, at 660.

Should the value of the dollar, measured in Special Drawing Rights (SDRs),[31] decline by more than twenty percent, the United States may increase the specific duties and charges on imports under authority given in article 20 of the Agreement.[32] Such an increase, however, must be no more than is needed to maintain the value of the specific duty in accordance with the tariff schedule set out in the Agreement.[33] Israel also has the right to increase duties in the event of a twenty percent devaluation of its currency.[34] Instead of the SDR, however, the Israeli currency is to be valued vis-a-vis the dollar.[35]

The Agreement does not modify or eliminate any of the import relief measures available to United States producers or manufacturers. Under § 406 of the Trade and Tariff Act of 1984, the United States retains all provisions under which relief from both fair and unfair import trade practices may be sought.[36] Additionally, section 404 of the Trade and Tariff Act of 1984 contains a "fast track" provision covering injurious imports of perishable horticultural products.[37]

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[31] SDRs are international reserve assets allocated to members of the International Monetary Fund (IMF) to supplement existing reserves. The SDR is the currency of the IMF and its value it calculated by reference to a basket of five currencies. GUIDE, *supra* note 2, at 36. *See generally* JACKSON, *supra* note 16, at 876-80 (further information on the SDR).

[32] Free Trade Agreement, *supra* note 3, at 665-66.

[33] *Id.* at 666.

[34] *Id.*

[35] *Id.*

[36] Trade and Tariff Act of 1984, Pub. L. No. 98-573, § 406, 98 Stat. 2948, 3017-18. Section 406 states:

> Neither the taking effect of any trade agreement provision entered into with Israel under section 102(b)(1), nor any proclamation issued to implement any such provision, may affect in any manner, or to any extent, the application to any Israeli articles of section 232 of the Trade Expansion Act of 1962, section 337 of title VII of the Tariff Act of 1930, chapter 1 of title II and chapter 1 of title III of the Trade Act of 1974, or any other provision of law under which relief from injury caused by import competition or by unfair import trade practices may be sought.

Id.

[37] *Id.* § 404. Section 404 provides that if a company files a complaint based on § 201 of the Trade Act of 1974, it may at the same time petition the Secretary of Agriculture for emergency action. The Secretary must respond to this petition by making a recommendation to the President within 14 days. Upon receipt of the recommendation, the President has seven days in which either to suspend duty free treatment of the product in dispute or to publish notice of his determination not to take emergency action. While this procedure is taking place, the International Trade Commission (ITC) will proceed with its § 201 investigation. Should the ITC bring back a negative finding of injury, that finding would supersede any emergency relief granted by the President. *Id.*

III. GATT CODES AND THE AGREEMENT

The Agreement also addresses trade issues that are the subject of three GATT codes. Annex 4 to the Agreement contains a commitment by Israel to eliminate its export subsidies programs on industrial goods and processed agricultural products within six years.[38] Additionally, the Israeli government commits itself to signing the Subsidies Code.[39]

Article 12 of the Agreement seeks to limit the use of import licensing requirements as a nontariff barrier.[40] Under that article, licensing requirements are not allowed unless licenses are automatically granted, necessary to administer allowable quantitative limits, or necessary to administer restrictions in conformity with the Agreement and the GATT.[41] Each party is to provide a list of items subject to licensing requirements and to specify whether each item is entitled to automatic or non-automatic import licensing.[42] In the administration of licensing requirements, the parties are to adhere to the provisions of the Agreement on Import Licensing Procedures.[43]

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[38] Free Trade Agreement, *supra* note 3, at 673-74. The export subsidies programs affected are the Export Shipping Fund, the Export Production Fund, the Imports for Export Fund, and the Medium Term Capital Goods Export Credits. *Id.*

[39] *Id.* at 673. The code on subsidies and countervailing duties, known officially as the "Agreement on Interpretation and Application of Articles VI, XVI, XXIII of the General Agreement on Tariffs and Trade," is one of the major accomplishments of the Tokyo Round of multilateral trade negotiations. L. GLICK, MULTILATERAL TRADE NEGOTIATIONS 52 (1984). The main features of the agreement, as described by the GATT Director General,

> include the coverage of both industrial and primary (e.g., agricultural) products in an agreement designed to insure that the use of subsidies does not adversely affect or prejudice the interests of any signatory to the agreement and that the imposition of countervailing duties do not unjustifiably impede international trade. The agreement establishes an international framework of rights and obligations in using subsidies and in invoking countervailing measures against them and imposes a system of surveillance and dispute settlement to hold each country accountable for its activities.

GATT, THE TOKYO ROUND OF MULTILATERAL TRADE NEGOTIATIONS II-SUPPLEMENTARY REPORT 37 (1980). The code on subsidies and countervailing duties is reprinted in GLICK, *supra* at 208-35.

[40] Free Trade Agreement, *supra* note 3, at 661-62. Import licenses are licenses required in order to import products into a country. GUIDE, *supra* note 2, at 34.

[41] Free Trade Agreement, *supra* note 3, at 661.

[42] *Id.* at 662.

[43] *Id.* The purpose of the Agreement on Import Licensing Procedures, as expressed by former United States President Carter in his transmittal message to Congress on the MTN agreements is "to simplify and harmonize to the greatest extent possible the procedures which importers must follow in obtaining an import license, so that

The Code on Government Procurement,[44] to which both Israel and the United States are signatories, provides for the waiver of "buy national" restrictions on a reciprocal basis.[45] Under article 15 of the Agreement, the two countries agree to a further elimination of government procurement-related trade restrictions by lowering the threshold level of application from 150,000 SDRs (about $156,000) to $50,000.[46] Israel also agrees to eliminate "buy national" restrictions in regard to the purchase of non-military products by its Ministry of Defense and to relax offset requirements in regard to civilian agency procurement.[47]

IV. NEW RIGHTS AND OBLIGATIONS

The Agreement also creates new bilateral rights and obligations between the two parties. Article 4 restricts the introduction of new customs duties or measures having an equivalent effect.[48] The article allows such measures only insofar as they are consistent both with the Agreement and the GATT, as in effect on the date that the Agreement entered into force.[49]

Article 8 allows either party to impose or maintain restrictions based on religious or ritual grounds,[50] provided they accord with the

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these procedures do not themselves constitute an unnecessary obstacle to international trade." Executive Summary of President Jimmy Carter, contained in a letter dated Jan. 4, 1979 to Hon. Thomas P. O'Neill, Speaker of the House of Representatives, and to Hon. Walter Mondale, President of the Senate, 44 Fed. Reg. at 1491 (1979). *See generally* GLICK, *supra* note 39, at 79-83, 327-34.

[44] Code on Government Procurement, GATT Doc. MTN/NTM/W/211/Rev. 2 (Apr. 11, 1979), *reprinted in* GLICK, *supra* note 39, at 236-58. The Code on Government Procurement arose from the Tokyo Round of multilateral trade negotiations, which concluded in 1979. Designed to open the large government purchasing market to increased worldwide competition, the Code provides that government contracts for more than 150,000 SDRs must not be restricted to domestic companies, except for those government agencies to which the Code does not apply. The Code also establishes rules ensuring that government procurement practices are applied openly and fairly. *See id.* at 64-69.

[45] "Buy national" restrictions are requirements, usually placed on procurements by the government of a country, that goods and/or services be of domestic origin. GUIDE, *supra* note 2, at 33.

[46] Free Trade Agreement, *supra* note 3, at 662.

[47] *Id.* at 663. Offset requirements are obligations placed on a foreign supplier of goods and/or services to purchase domestic goods and/or services with the funds paid by the government. GUIDE, *supra* note 2, at 35.

[48] Free Trade Agreement, *supra* note 3, at 658.

[49] *Id.*

[50] *Id.* at 659.

principle of national treatment.[51] Although applicable to both parties, the purpose of this article is to provide Israel a special exception for its national Kosher laws.[52]

Under article 13 of the Agreement, neither party may impose export or local purchase requirements as a condition of establishment.[53] Additionally, this article prohibits the imposition of local purchase requirements as a condition of receiving government incentives.[54]

The Agreement has only a marginal effect on agriculture and trade in services. Article 6 permits both parties to maintain import restrictions based on agricultural policy considerations.[55] Although such restrictions may not take the form of customs duties, the article allows all other forms of restriction, including quantitative limits and fees.[56]

Article 16 states that "the parties agree to develop means for cooperation on trade in services pursuant to the provisions of a Declaration to be made by the parties."[57] That declaration sets forth a series of principles under which both parties endeavor to create a less restrictive market for trade in services.[58] None of the provisions of this declaration, however, are binding on either party.[59]

Annex 3 contains the rules of origin requirements.[60] To qualify as having originated in Israel or the United States, products must: (1)

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[51] *Id.* National treatment means that imported goods will be accorded the same treatment as goods of local origin with respect to matters under government control. JACKSON, *supra* note 18, at 273.

[52] The Kosher laws, or kashruth, play an important part in Jewish life. These laws detail both what foods are permitted to be eaten and the methods of preparing these foods. There exist conflicting rationales for these dietary laws. The most persistent is that they are hygeinic measures. The Torah, however, regards dietary laws as a discipline in holiness; a spiritual discipline imposed on a biological activity. This discipline affects the tension between wanton physical appetites and the endeavors of the spirit. *See generally* I. KLEIN, A GUIDE TO JEWISH RELIGIOUS PRACTICE 302-04 (1979).

[53] Free Trade Agreement, *supra* note 3, at 662. Export requirements are obligations placed on producers and/or exporters to export a certain percentage of production, usually in order to receive governmental incentives. GUIDE, *supra* note 2, at 33.

[54] Free Trade Agreement, *supra* note 3, at 662.

[55] *Id.* at 659.

[56] *Id.*

[57] *Id.* at 663.

[58] *Id.* at 679-81.

[59] *Id.* at 679. The declaration, however, provides for the review of the declaration's effectiveness within 18 months of the Agreement's signing. At that time, the parties will explore the possibility of making the declaration binding on both parties. *Id.* at 681.

[60] *Id.* at 669-73. Rules of origin establish whether or not an article is a product of a particular country. GUIDE, *supra* note 2, at 36.

be wholly the growth, product, or manufacture of one of the parties; (2) be imported directly from one party into the other; and (3) contain at least 35 percent value added in the exporting country.[61]

The Agreement remains in force until terminated by either party[62] by written notification. The Agreement expires twelve months after the date of such notification.[63]

V. COMMENT

Throughout the course of the negotiations, the United States sought to ensure that the Agreement would comply with its GATT obligations.[64] Article XXIV of the GATT allows the establishment of a free trade area provided it meets certain criteria. Such a free trade area must be designed "to facilitate trade between the constituent territories and not to raise barriers to the trade of the other contracting parties with such territories."[65] Additionally, the free trade area must cover "substantially all the trade"[66] between the parties and must be staged into effect "within a reasonable length of time."[67]

Although arguably complying with the provisions of article XXIV, the Agreement violates the fundamental principle of the GATT — that of the most-favored nation.[68] The most-favored nation (MFN) principle is set out in part 1, article 1, section 1 of the original GATT instrument, and provides that "any advantage, favour, privilege or immunity granted by any contracting party to . . . any other country shall be accorded immediately and unconditionally to . . . all other contracting parties."[69]

The United States, with one notable exception prior to the Reagan administration,[70] has been a strong supporter of the multilateral frame-

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[61] Free Trade Agreement, *supra* note 3, at 669-70. Additionally, Annex 3 provides that an article will not be considered a new article and a material will not be considered eligible for inclusion as domestic content by virtue of having undergone combining or packaging or dilution with water. *Id.* at 670.

[62] *Id.* at 666 (article 23).

[63] *Id.*

[64] Statement, *supra* note 6, at 2.

[65] BASIC INSTRUMENTS, *supra* note 18, at 47-8. *See generally* JACKSON, *supra* note 18, ch. 24.

[66] BASIC INSTRUMENTS, *supra* note 18, at 49.

[67] *Id.* at 48.

[68] *See generally* JACKSON, *supra* note 18, ch. 11 (background information on MFN clauses).

[69] BASIC INSTRUMENTS, *supra* note 18, at 4.

[70] That exception was the United States-Canada Automotive Products Agreement. This Agreement was designed to encourage integration and rationalization of au-

work of international trade created by the GATT. That support arose from the decision made by the United States following the Second World War to create a world trading system free of preferential trading arrangements by establishing a strong MFN provision.[71]

Although initially characterizing bilaterialism as "a serious threat to U.S. commerce and to the international trading system as a whole,"[72] the Reagan administration now seems to regard bilateralism as an acceptable method of regulating trade relationships. This attitude can be seen both in the establishment of the free trade agreement with Israel and the Caribbean Basin Economic Recovery Act.[73]

The decision by the United States to negotiate a free trade agreement arose from a number of considerations. One was that such an agreement could help United Stated exporters regain their competitive position in the Israeli market vis-a-vis the European Communities (EC),[74] which concluded a limited free trade agreement with Israel in 1975.[75] Another consideration, though not specifically enumerated,

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tomotive parts production between the two countries. *See generally* JACKSON, *supra* note 15, at 546-59. *See further* Note, *The United States-Canadian Automotive Products Agreement of 1965*, 1 J. WORLD TRADE L. 103 (1967).

[71] United States negotiators at the original GATT negotiations were particularly concerned with eliminating the Commonwealth tariff system. The Commonwealth system was an extension of the British Preferential rates which gave members of the British Commonwealth preferential trading access to the United Kingdom by imposing tariff and other barriers on competing imports from non-Empire sources. JACKSON, *supra* note 18, at 251. This was a part of the larger effort on the part of the United States post-war planners to move away from the economic nationalism and economic isolationism which characterized trading relationships in the inter-world war years. These planners believed that as the foremost economic power, the United States should be responsible for creating a freely flowing international trade system. Not only was such a system needed to create foreign markets for United States products, but a healthy economic environment was also needed to achieve world peace. R. GARDNER, STERLING-DOLLAR DIPLOMACY 12 (1969).

[72] *Twenty-fifth Annual Report of the President of the United States on the Trade Agreement Program* 9 (1980).

[73] Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983) (codified in scattered sections of 19, 26, and 33 U.S.C.). The Act is part of the larger Caribbean Basin Initiative sponsored by the Reagan administration as part of its Central American policy. The Act seeks to stimulate private economic development in the Caribbean by increasing the flow of products from the region into the United States markets through an elimination of tariffs on these products. Recent Development, 25 HARV. INT'L L. J. 245 (1984).

[74] Statement, *supra* note 6, at 7-8.

[75] HOUSE REPORT, *supra* note 1, at 3. In 1975, the EC and Israel established a bilateral free trade area covering industrial and certain agricultural products. After the full implementation of the EC-Israel free trade agreement in 1989, United States dutiable exports in the absence of the United States-Israel free trade agreement would

may have been the desire on the part of the administration to recapture part of the Jewish vote which it had lost since the 1980 presidential election.[76] A third consideration was that giving Israel free access to the United States market could reduce Israel's dependence on United States aid.[77]

These considerations evidence one of the major criticisms of trade bilateralism — a substitution in emphasis from economics to politics[78] — which can also be seen in the Caribbean Basin Economic Recovery Act (Act). Under the terms of the Act, the products of twenty-seven countries are eligible to receive duty free import status into the United States.[79] A country's products are eligible if that country meets certain conditions set out in the Act. Some of these conditions include: the country must not be Communist;[80] the country must assist the United States in controlling drug traffic emanating from or passing through

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have faced an average tariff disadvantage of 10.5 percent in relation to European exports to Israel. *Id.*

[76] *See Administration Launches Campaign to Retrieve Jewish Vote*, Wash. Post, Dec. 27, 1983, at 1, col. 2. The President won the 1980 election with more than 40 percent of the Jewish vote. A poll taken in October 1983, however, showed that only 23 percent of the Jewish voters currently supported him. *Id.* On November 29, 1983, the following month, President Reagan announced plans to begin formal negotiations on a free trade agreement with Israel. HOUSE REPORT, *supra* note 1, at 3.

[77] *Israel and U.S. Facing Hurdles on Trade Pact*, N.Y. Times, Jan. 10, 1985, at D1, col. 1. The free trade agreement negotiations concluded as Israel submitted its largest-ever United States aid request — $4.05 billion for 1986 and an additional $800 million for 1985. *U.S. and Israel Set Pact to End Tariffs by 1995*, N.Y. Times, Mar. 5, 1985, at A1, col. 2.

[78] C. WILCOX, A CHARTER FOR WORLD TRADE, 18-19 (1972).

> The case against bilateralism is a familiar one. By reducing the number and size of the transactions that can be effected, it holds down the volume of world trade. By restricting the scope of available markets and sources of supply, it forces disadvantageous transactions and limits the possible economies of international specialization. By freezing trade into rigid patterns, it hinders accomodations to changing conditions. Bilateralism places the essential decisions as to the volume of trade, the direction of exports, and the sources of imports in the hands of the state. It substitutes the judgement of the bureaucrat for the judgement of the market place. It necessitates increasing regulation of domestic trade. It begets discrimination in international commerce. It enables states with larger bargaining power to gain at the expense of weaker ones. It tends to shift the emphasis in commercial relations from economics to politics.

Id.

[79] Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, § 212(a)(2)(B), 97 Stat. 384, 385 (1983).

[80] *Id.* § 212(b)(1).

that country;[81] the country must agree to the extradition of United States citizens;[82] and, the country must not have seized ownership of property owned by United States citizens or by any corporations more than fifty percent owned by United States citizens.[83]

Thus, what emerges from the U.S. — Israel free trade agreement and the Caribbean Basin Economic Recovery Act is a policy of using international trade as a tool towards achieving widely-disparate, non-economic goals. To the extent that the United States deviates from the multilateral framework which created the present trading system, it risks a restriction of the global market and the threat of retaliation by other nations. As one of the major participants and beneficiaries of the post-World War II trading system, the United States must develop and maintain a coherent trade strategy based on the economic goals of global free trade.

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[81] *Id.* § 212(b)(6).
[82] *Id.* § 212(b)(7).
[83] *Id.* § 212(b)(2).