

Congress of the United States

Washington, DC 20515

March 31, 2006

Ambassador Rob Portman
United States Trade Representative
600 17th Street, NW
Washington, DC 20508

Dear Ambassador Portman:

We would like to take this opportunity to write to you regarding the United States Trade Representative (USTR) Special 301 Report for 2006. As you conduct your annual review of intellectual property laws in various countries in the framework of the Special 301 Report, we respectfully urge you to present a fair and balanced report with respect to Israel and to respect Congressional intent regarding Israel's accession to the OECD.

It is our understanding that the USTR has been asked to designate Israel in 2006 as a "Priority Foreign Country" and to block Israel's prospective membership in the Organization for Economic Cooperation and Development (OECD). We strongly feel this recommendation is unwarranted and biased.

In its 2005 report, the USTR elevated Israel from "Watch List" status to "Priority Watch List" status, despite Israel's efforts to provide adequate intellectual property protection while ensuring access to medicines for its citizens. We were deeply concerned about this designation, when in fact Israeli intellectual property laws relating to data exclusivity and patent term restoration exceed the level of protection afforded in other countries on the Priority Watch List and Watch List.

For example, at least ten countries on the 2005 Priority Watch List lacked data exclusivity protections entirely while many countries on the list have ineffective data exclusivity. In addition, at least eleven of the countries on the 2005 Priority Watch List, at least twenty-nine of the countries on the 2005 Watch List, and four countries currently in the OECD provide no patent term restoration protections at all.

In strong contrast, Israel provides significant data exclusivity protection and patent term restoration. Data exclusivity is allotted for 5 ½ years from the date an innovative drug is first approved for use in a recognized country¹, or five years from the date of approval for use in Israel, whichever is earlier. This model is adapted from the North American Free Trade Agreement (NAFTA).

¹ A "recognized country", as defined in the Pharmacists Regulations (Pharmaceutical Products), 1986, includes any one of the following countries: United States, Canada, the EU member states, Norway, Switzerland, Iceland, Japan, Australia and New Zealand.

In addition, patent term restoration is allotted for up to five years beyond the twenty-year minimum patent term required under the most comprehensive multilateral agreement on intellectual property, the World Trade Organization (WTO) TRIPS agreement.

Mr. Ambassador, the Congress has spoken regarding Israel's accession to the OECD and would strenuously object to Israel being excluded from OECD membership on the aforementioned grounds. Israel has clearly met the criteria for OECD membership. As you know, last year the U.S. House of Representatives unanimously passed House Resolution 38, urging that Israel be admitted to the OECD without delay. Moreover, Israel's performance regarding patent term restoration clearly surpasses that of the aforementioned four OECD countries that provide no protection whatsoever in this area.

Although the USTR has had concerns in the past regarding Israel's intellectual property laws, we request your recognition of Israel's successful efforts to balance the need to preserve timely access to treatments for the Israeli public with strong patent protections for innovators. As a friend and close ally of the United States, Israel deserves to be treated in a fair manner with regard to USTR designations in the Special 301 Report. Accordingly, we respectfully urge you to preclude Israel's status as a "Priority Foreign Country" or even a designation on the Priority Watch List.

Sincerely,



Heana Ros-Lehtinen
Member of Congress



Tom Lantos
Member of Congress



Thaddeus McCotter
Member of Congress



Gary Ackerman
Member of Congress



Katherine Harris
Member of Congress



Rahm Emanuel
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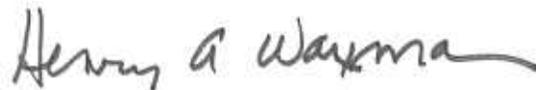
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Howard Berman
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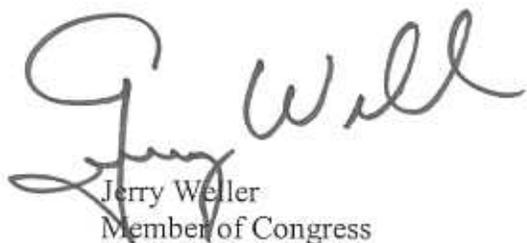
Sander Levin
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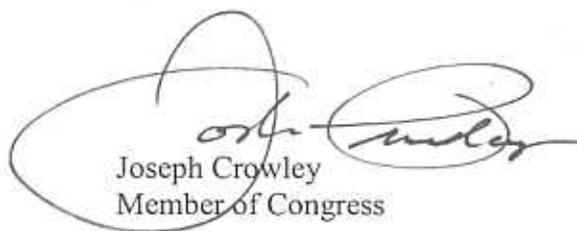
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