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INTERCEPTION CAPABILITIES - IMPACT AND EXPLOITATION

Paper 2

**COMINT impact on
international trade**

COMINT IMPACT ON INTERNATIONAL TRADE

1. Following the publication of the IC2000 report, a great deal of attention was focussed on one short section, less than a single page, entitled “The use of Comint economic intelligence product”. That section gave examples, quoted either from primary sources or from the U.S. press, of the production and/or exploitation of communications intelligence relevant to the trade and economic interests of the United States. The examples then given were intended to provide simple contextual information in a report that primarily focussed on technical systems and communications intelligence (Comint) capabilities.
2. This report provides an in-depth and sourced analysis of the development of U.S. economic intelligence policy from 1990 to date, a description of the role of communications intelligence in economic intelligence, and in particular describes the development and functioning of the “Advocacy Center” (set up in 1993) and the “Office of Executive Support” of the U.S. Department of Commerce (set up in 1979).
3. Prior to 1990, it is widely accepted that the primary function of the U.S. intelligence system, usually working in close co-operation with western European allies, was to gather intelligence of all types on the former Soviet Union, its allies, and on the People’s Republic of China. Nevertheless, during this period, economic intelligence (including on allies) was also systematically collected and shared between the participant countries of the UKUSA alliance. These included both COMINT and other secret intelligence (mainly HUMINT, i.e. human or agent-based intelligence).
4. The removal of the Berlin wall and the rapid collapse of the Soviet Union and the communist system brought about dramatic changes inside all western intelligence agencies. The principal intelligence target suddenly disappeared. Agencies throughout the west faced a period of “downsizing”, reducing their budgets, staffs, operations and facilities. Over a decade, the National Security Agency (NSA) lost about 15% of its budget, 20% of its staff, and closed more than 20 overseas Sigint field stations.¹ In these circumstances, the United States entered into a period of open and wide-ranging debate on the future tasks and functions of its intelligence services.
5. President Bush (senior) made wide-ranging changes to U.S. intelligence policy during 1991-1992. Between 1993 and 1994, his successor President Clinton introduced a system that brought U.S. companies into direct contact with a centralised government “advocacy” system that advised and supported overseas trade, using intelligence from the CIA and other sources.² Government-inspired reports in the U.S. media in 1995 and 1996 then reported that Comint, including satellite intercepts, was being used to win business from foreign competitors. It was not until two years later that European politicians became aware of these practices, or that part of it was known internally as Echelon. By the end of the 1990s, the U.S. administration claimed that intelligence activity against foreign companies had gained the U.S. nearly \$150 billion in exports.

¹ See <http://www.fas.org/irp/commission/budget.htm>

² See paragraphs 36-39 **HYPERLINK TO 36-39**

6. Although U.S. intelligence officials and spokespeople have admitted using Comint against European companies, this admission has been limited to occasions on which it is alleged that European contractors have offered or paid bribes. However, examination of U.S. policy developments indicates that such intelligence collection is much more broadly focussed, and can include “subsidies, government-to-government lobbying, schemes to promote exports and restrain imports, unwritten agreements, strange financial links and unusual commercial deals”. The definition of corrupt or “unfair” practices is not limited to illegality, but includes any occasion on which American companies believe that their products are better and cheaper than their competitors and should have been purchased by the overseas buyer. Other documents show that the CIA has been directly involved in obtaining competitor intelligence for business purposes.

Economic intelligence – definitions and issues

7. “Economic intelligence” can have many different meanings. Most governments do not disavow collecting and analysing *macroeconomic intelligence* in order to carry out national trade and treasury functions. Such intelligence can be obtained by studying commodity markets and prices, contracts and commerce, and the stated policy positions of governments and trading organisations. At this level, macroeconomic intelligence gathering and assessment is little different from the work of industrial and financial analysts or media financial specialists. It can be entirely lawful, and need not depend on any form of secret intelligence.
8. Secret intelligence collection for macroeconomic purposes can be directed to producing better information than is available from open sources, in order to make better industrial or financial decisions, or to obtain advantages in trade negotiations. For example, governments may try and discover the confidential policies or strategies of others with whom they are negotiating. They want to learn about “policy deliberations concerning foreign trade, investments, loans and positions on bilateral economic negotiations”.³
9. A characteristic feature of such intelligence is that it is directed towards or is relevant to negotiations or actions to which the government itself is a party. Thus, NSA and other Sigint agencies have collected and used intelligence on wheat trade negotiations, oil prices and OPEC, the positions of parties attending UNCTAD⁴ and APEC⁵ summits, as described below (see paragraph 19) **HYPERLINK TO PARA 19**. But the exploitation of such intelligence is solely a matter for governments, not individual producers or traders, even though they may be the ultimate beneficiaries.
10. In contrast, *microeconomic intelligence* or *competitive intelligence* is concerned with detailed contractual and/or company level intelligence. This is information which may allow companies or corporations to gain advantage in a particular market by advance or improved knowledge of the markets or purchasers, or by obtaining specific and usable information about rivals’ marketing activities and, especially, bidding. Two sorts of microeconomic intelligence are the most helpful:

³ Testimony of Robert M. Gates, Director of Central Intelligence, contained in U.S. House of Representatives, The Threat of Foreign Economic Espionage to U.S. Corporations, Hearings before the Subcommittee on Economic and Commercial Law, Committee on the Judiciary, 29 April 1992, Washington, DC: USGPO, 1992, page 88.

⁴ United Nations Conference of Trade and Development

⁵ Asia-Pacific Economic Forum

- (i) Preliminary information about contracts that may be offered or are about to be put out to tender, such as the “Request for Proposals” (RFP) stage of contractual negotiations;
- (ii) Specific information about rival bids as tenders are closed – the “Best and Final Offer” (BFO) stage.

Both of these types of microeconomic intelligence are amenable to collection by means of systematic COMSAT interception.

11. Economic intelligence, both macroeconomic and microeconomic, can overlap strongly with other forms of intelligence gathering. Intelligence about the negotiating positions of foreign governments in bilateral or multilateral negotiations is as relevant to diplomacy as it is to trade. In the area of defence, intelligence on international arms sales may be collected for military reasons, but is likely by its nature to reveal microeconomic intelligence of high value to companies in major arms producing countries.⁶ On the other hand, microeconomic information about major commodities such as gold and oil is often a high priority Comint collection target - but this information may seldom have much utility for boosting trade. Where the targets are the so-called “pariah” countries, such as North Korea and Iraq, very large quantities of microeconomic intelligence are collected and processed. But this is done to obtain a detailed picture of economic conditions in order to assess political conditions and stability, not to obtain trade advantages. It follows that there are and can be no clear lines between diplomatic, military, strategic and economic intelligence.
12. A third kind of economically relevant intelligence is technical data on foreign products, processes and inventions. Intelligence about foreign technical developments is collected and collated both openly and covertly. For example, the US Air Force Systems Command maintains a large Foreign Technology Division at Wright-Patterson Air Force Base, Ohio, which works on these issues.⁷ The CIA also has a Foreign Technology Division.
13. A key issue concerning the use of economic intelligence is dissemination. Sigint agencies including NSA place very strict controls on those who can see their reports, and the use that may be made of them. Their position is based on the belief that, if targets become aware that interception is taking place, they will change their communications methods and procedures to prevent this happening in future, thus cutting off the flow of intelligence. Historically, major military and diplomatic decisions have been influenced by the need not to act in a way which would alert an adversary to poor communications security. An outstanding example is the Battle of the Atlantic in the Second World War.
14. Regulations concerning Sigint forbid the dissemination of reports or information to any persons not holding special clearances, known in the U.S. as “special intelligence” (SI) or “Sensitive Compartmented Information” (SCI) and in Britain and Canada as “Very Restricted Knowledge” (VRK). To obtain such clearances, a person must first be approved to see material classified “Top Secret” and then undergo further security checks to be given access to SI. Even then, it is “compartmented”, meaning that access to each item of information or details of a project is limited by the use of one or more codewords. The individual must have a “need to know” for each codeword, otherwise they will be refused

⁶ An example of this was given in the IC2000 report (paragraph 101). The word “Tornado” (the European made fighter aircraft) was included on NSA’s key word lists for military reasons, but produced information about marketing of the aircraft in the Middle East.

⁷ Now known as NAIC, the National Air Intelligence Centre.

access. Information of this kind must always be held only within specially shielded and protected buildings and facilities, called SCIFs.⁸

15. For these reasons, it is not usually open to commercial company executives to contact national intelligence organisations and request secret Sigint or other intelligence. Such information will only be made available to properly cleared government officials, and its exploitation by giving advice to companies will generally be tightly controlled as a matter of strict government policy. Thus, if Sigint is to be used for economic advantage, the following steps have to be taken:
- (i) Intelligence agencies have to be told to collect and report economically relevant information, the types of information desired, and the priority this is to be given relative to other targets;
 - (ii) Channels have to be established for handling Sigint in appropriate conditions, so that the results may be exploited in order to assist trade and commerce;
 - (iii) A policy decision must be taken to use the intelligence, either generally or on a case-by-case basis, to benefit trade

The first two steps were taken in the United States between 1960 and 1990. The third was put in place in 1993.

U.S. economic intelligence policy before 1990

16. Prior to 1990, it appears that the U.S. did not have any established national policy for handling and exploiting competitive intelligence. Individual ex-NSA staff⁹ have claimed that, nevertheless, competitive information could be and was passed to defence contractors through channels established to supervise the contractors' arrangements for handling classified information. These officials were known as Special Security Officers (SSOs) and held high-level Sigint clearances. The requirement for disseminating intelligence information only through special channels was thus met if information was passed only through SSOs.
17. In 1969, economic intelligence was made a U.S. national intelligence priority. According to Gerard Burke, the former Executive Director of the President's Foreign Intelligence Advisory Board (PFIAB), the board recommended that "henceforth economic intelligence be considered a function of the national security, enjoying a priority equivalent to diplomatic, military, technological intelligence".¹⁰ Prior to working for PFIAB, Burke had been Chief of Staff for NSA.
18. In May 1977, a new department was created inside the U.S. Department of Commerce, called the "Office of Intelligence Liaison" (O/IL). Its task was to handle "foreign intelligence" of interest to the Department. Its standing orders show that it was authorised to receive and handle SCI intelligence, i.e. Comint and Sigint. The creation of this office thus

⁸ Sensitive Compartmented Information Facility.

⁹ One such former officer was ex NSA analyst Perry Fellwock, in 1973. See *Ramparts*, Vol. 11, No. 2, August, 1972, pps. 35-50. On line at <http://www.euronet.nl/~rembert/echelon/nsa-elint.htm>

¹⁰ "Dispatches : The Hill", Channel 4 Television (UK), 6 October 1993

provided a formal mechanism whereby NSA and CIA data could be communicated and used to support U.S. commercial and trade interests.¹¹

19. The use of Sigint for trade purposes in the 1970s has been documented on a number of occasions:

- (i) A 1976 Sigint report prepared in Australia was published in a book in 1979.¹² The report concerned oil and OPEC. It included details of instructions given to French diplomats on negotiations with OPEC, which presumably were obtained by intercepting and breaking the codes of French diplomatic messages;¹³
- (ii) A declassified U.S. government report on intelligence activities prior to the UNCTAD V summit, held in Manila in May-June 79, states that the U.S. negotiators were supplied daily with intelligence on the other parties including “relevant intercepts picked up by NSA anywhere in the world”.¹⁴ The objective of the UNCTAD V intelligence operation was to keep the U.S. delegation “aware of the plans and tactics of the other conference participants”. This included monitoring caucus meetings during the summit from which Americans were excluded, including the “European Community caucus”. The report praises “support from Agency stations in Europe, a backstop that we had arranged in advance, proved valuable [...]especially in uncovering the West German fallback position on Common Fund financing”¹⁵

20. Despite the new links between the CIA and the Department of Commerce, the CIA director at the time, Admiral Stansfield Turner, has stated that there was at that time no official U.S. policy for using competitive intelligence to benefit business, even when this was acquired fortuitously. Turner has recounted an anecdote that a CIA station chief had acquired full details of information about “what three foreign companies were bidding in a major contract against one American company.” When Turner enquired what action was taken, he says he was told:

“We don’t have any policy on this, so I did nothing”¹⁶

21. Nevertheless, according to a 1992 study by an intelligence insider, during Admiral Turner's tenure, the “CIA routinely held briefings at the Commerce Department for U.S. corporate bigwigs”:

Once, for example, the CIA discovered information about China's plans to build hydroelectric plants, and it filled in a "couple of dozen" U.S. companies involved in electric power projects, Turner says. Other seminars were held on semiconductors and aircraft technology.¹⁷

¹¹ It would not be necessary for the NSA to have personnel attached to the Office of Intelligence Liaison in order to provide it with Sigint.

¹² Richard Hall, *The Secret State*, Cassell Australia 1978.

¹³ *Ibid*

¹⁴ Michael Vanderbrook “UNCTAD V: Intelligence Support at a major International Economic Conference”, *Studies in Intelligence*, Vol 24, no 1, CIA, Spring 1980. Now declassified (with redactions).

¹⁵ “Agency” in this context probably means CIA and not NSA.

¹⁶ Dispatches, *ibid*

¹⁷ Loch K. Johnson, “Smart intelligence”, *Foreign Policy*, 22 December 1992

22. The same report also cited Herb Meyer, a former special assistant to CIA Director William Casey and vice chairman of the CIA's National Intelligence Council, as saying that there was always an informal exchange of information between intelligence and business.

"We've always managed to get intelligence to the business community. There is contact between business people and the intelligence community, and information flows both ways, informally"

The Pentagon was said to routinely share top secret information with companies such as Lockheed, TRW, Northrop, Martin Marietta, and dozens of others, including vehicle manufacturers. According to Ken Bass, who was counsel for intelligence policy at the Justice Department under President Carter:

"The technological intelligence that the [CIA] has acquired has always been shared widely with the military-industrial complex"

23. Turner, who openly favoured using competitive intelligence to benefit American business, says however that he encountered "tremendous resistance in the CIA and elsewhere in our government to doing this kind of thing. You know, old chap, it isn't the right thing to do". Turner's view was:

"That didn't impress me [...] People are beginning to appreciate that the business community is an essential part of defending our country"

US economic intelligence policy since 1990 – "Levelling the playing field"

24. Post cold war assessments of U.S. intelligence operations took place in 1990 and 1991. Members of the Senate intelligence committee and other leading politicians openly urged the administration to start collecting and using competitive intelligence.
25. According to a former official of the State Department's Intelligence and Research Bureau, the U.S. intelligence community was first tasked to come up with economic counterintelligence during the (first) Bush administration. According to a published interview with the official, Randall Fort, the first important case which alerted White House policymakers to the potential commercial value of intelligence concerned a \$500 million power plant at to be built at Homs in Syria. Communications concerning the contract were being routinely monitored by NSA for other reasons. The former intelligence official says:

"Using the normal net for gathering communications intelligence [we found that] the Japanese were bribing the s—t out of Syria [...] It came to our attention that a U.S. company was also trying to win this contract [...]"

Fort says that approaches were then made to the Syrian government warning that if Syria wanted to improve its position with the U.S., it should not go along with the bribery. The U.S. competitor was then awarded the contract.¹⁸

26. Fort also told NBC that during his time in U.S. intelligence:

¹⁸ Robert Windrem, "U.S. spying pays off for business" NBC News online, 15 April 2000 Originally published at <http://www.msnbc.com/news/394993.asp> This link is broken at the time of writing. An alternative copy can be found at <http://www.dei.uc.pt/majordomo/sociedade/msg01132.html> and on other sites

“Periodically, reports would come through that indicated activities were nefarious, not above-board [...] Sourcing was more frequently obtained if [a] government was procuring. We would have penetrations of that government, hearing something from a deputy vice-premier or a cabinet minister [...] Those sorts of things came up periodically, but they were dealt with on an *ad hoc* basis ... not ignored but handled *ad hoc*”

But after intervention in the Syrian contract, policy changed. If something was discovered while watching the flow of intelligence, officials:

“became more pro-active [...] an ‘intelligence requirement’ would be levied”

This meant that official instructions would be given to the intelligence agencies to go out in “an aggressive, pro-active manner” and gather what can be gathered.¹⁹

27. During 1991, future CIA Director James Woolsey chaired a special panel examining future intelligence priorities.²⁰ By December 1991, a draft National Security Directive, NSD-67, had been prepared on “Intelligence Capabilities – 1992-2005”. It was circulated to 20 agencies and departments for comment, and then formally approved by the U.S. National Security Council and issued from the White House on 20 March 1992.²¹ The then Director of Central Intelligence Robert Gates, called it “the most far-reaching directive to assess future intelligence priorities and needs since 1947.” The directive asked. “What kinds of economic intelligence do we need?”²²
28. Gates was questioned about the new order at a Congressional hearing on 29 April 1992, and stated:

“The intelligence community has been engaged in collection on economic intelligence issues for some years, but this national security directive really expanded and made more specific policymaker direction and priorities in terms of what the policy community up to, and including, the President wants us to collect against [...]

About 40 percent of the requirements that were approved by the President are economic, either in part or in whole. They deal with questions in the whole arena of information needed to **level the playing field**, what foreign governments are doing to disadvantage the United States, not play by the rules, not abide by agreements and so forth. Questions about predatory and subversive foreign targeting of US industry, as well as these questions we've been discussing today about foreign counter-intelligence. So, for the first time, I think really this national security directive codifies and prioritizes the economic requirements being placed on the intelligence community”²³ (*emphasis added*).

29. Gates also stated that the national security review ordered by President Bush in November 1991²⁴ had “highlighted the dramatic increased importance of international economic

¹⁹ Windrem, *ibid*. The process of issuing instructions is normally called “tasking”

²⁰ “The New Presidency: Journey of the CIA nominee”, *Washington Post*, 11 January 1993,

²¹ “U.S. Demands for Economic Intelligence Up Sharply, Gates says”, *Washington Post*, 14 April 1992.

²² “U.S. review focus of security data”, *New York Times*, 22 December 1991.

²³ Testimony of Robert M. Gates, Director of Central Intelligence, contained in U.S. House of Representatives, The Threat of Foreign Economic Espionage to U.S. Corporations, Hearings before the Subcommittee on Economic and Commercial Law, Committee on the Judiciary, 29 April 1992, Washington, DC: USGPO, 1992, page 88.

²⁴ National Security Review 29 (NSR-29), 1991

affairs”. The new policy, which would include collecting intelligence on US allies, was aimed at revealing “subsidies, government-to-government lobbying, schemes to promote exports and restrain imports, unwritten agreements, strange financial links and unusual commercial deals”. These, Gates told the Congress, were all “illustrative of economic behaviour that we in the intelligence community need to understand and follow”.²⁵

30. Also in April 1992, Admiral William Studeman, then both the Director of the NSA and Deputy Director designate of the CIA, spoke to a meeting of the Maryland Chamber of Commerce. He told his audience that, with NSA facing substantial cutbacks in its budget following the end of the cold war, the Agency proposed increasingly to target the economic and corporate affairs of allies of the United States. In particular, he said, attention would be directed not just to general economic intelligence - such as money and commodity flows - but to "competitive intelligence" including sealed bids and technological innovation.²⁶
31. President Clinton was elected in 1992 on a campaign platform that included prominent undertakings to improve the U.S. economy and trade competitiveness. On the day after his inauguration, on 21 January 1993, he ordered major changes to top level economic intelligence arrangements. A new national economic adviser (the “Assistant to the President for Economic Policy”) was appointed and made a member of the National Security Council. The assistant, Robert Rubin, was appointed to serve as a “senior economic adviser to coordinate foreign and domestic economic policy through a newly-created National Economic Council (NEC) [...] The NEC was to deal with foreign and domestic economic issues in much the same way as the NSC coordinated diplomatic and security issues”.²⁷ The National Economic Council’s tasks included operating a “National Export Strategy”.
32. Both the Presidential Assistant for Economic Affairs and the Secretary of the Treasury were given daily CIA briefings on economic intelligence. According to a recent report:
- “Economic intelligence gathering became policy. The CIA designed a new daily intelligence digest, called the ‘Daily Economic Intelligence Briefing’. Highly classified with a limited run of 100 copies, it’s distributed to officials at the White House and cabinet-level departments throughout the government’s economic bureaucracy”.²⁸
33. Two weeks later, Clinton’s nominee for the post of CIA Director, James Woolsey, said at confirmation hearings before the Senate Intelligence Committee that U.S. intelligence agencies’ role in economic spying was “the hottest current topic in intelligence policy issues”.²⁹ The chairman of the intelligence committee, Senator Dennis DeConcini, also held two secret hearings on the issue of providing intelligence to US business. His panel examined suggestions that “the Commerce Department, after improving its own collection of economic information, could be used to disseminate economic intelligence”. He recommended that the administration should adopt a policy for handling “economic intelligence collected by spy agencies that is not vital to national security [...] my own feeling is we ought to give it to our industry”.³⁰ While he did not advocate running agents

²⁵ Speech to the Economic Club of Detroit, 13 April 1993, reported in the *Washington Post*, *ibid* (note 00)

²⁶ Private communication from James Bamford, author of the *Puzzle Palace*. Mr Bamford, then a producer for ABC TV, attended the meeting and took notes.

²⁷ Note on NSC, Office of the Historian, U.S. Department of State, August 1997, published at <http://www.fas.org/irp/offdocs/nsd67.htm>

²⁸ See note 18 **HYPERLINK TO NOTE 18**

²⁹ “CIA nominee tells senators economic spying is 'hot topic' “, *Washington Times*, 3 February 1993

³⁰ “Senator suggests CIA give business trade secrets”, *Washington Times*, 13 March 1993.

against the Airbus consortium and giving the product to Boeing or McDonnell Douglas, he explained "if we find something not to share it with our people seems to me not to be smart".

34. Senator DeConcini conceded that sharing secret intelligence with private business would "open up a bag of worms," including legal questions of how secrets could be shared and who would have access. Public debate about the issue then continued, focussing on several issues:
- (i) The morality of microeconomic espionage and the consequences if such activity were to be exposed;
 - (ii) The question of how information could be disseminated, given the sensitivity of secret intelligence;
 - (iii) The question of which businesses were genuinely American, meriting help, and in particular what to do if U.S. firms were also in competition in each other.

For some time, these questions continued to be controversial. The outgoing CIA director Robert Gates asserted at this time that "the U.S. intelligence community does not and will not engage in industrial espionage".³¹

35. The changes in policy directed by President Clinton resulted in almost immediate conflict between the U.S. and France, with mutual public allegations of commercial and technical espionage. In May 1993, the CIA distributed copies of a 21 page document purported to be "intelligence requirements" issued by the French intelligence service DGSE for use in operations in the U.S. The list included many areas of commerce, science and technology. The CIA gave the list to a Congressman who gave it to the press.³² The 21-page shopping list for commercial secrets, the authenticity of which reportedly went unchallenged by the French government, listed projects ranging from aerospace to high definition TV.

The Trade Promotion Co-ordinating Committee and the Advocacy Center

36. Although no full statements were made about the outcome of the intelligence policy reviews conducted in the first year of the Clinton administration, subsequent developments show that the "levelling the playing field" policy on economic intelligence, first proposed in 1991, was fully implemented by Clinton and Woolsey. The heart of this was the Trade Promotion Co-ordinating Committee (TPCC), which had been founded in 1992 at Congressional request.
37. The operating arm of the new, co-ordinated trade campaign was an "Advocacy Center" established inside the Department of Commerce. According to its web site, the Centre provides "coordinated action by U.S. government agencies to provide maximum assistance in a case [...] The Advocacy Center is at the core of the President's National Export Strategy, and its goal is to ensure opportunities for American companies".³³ The Centre says of itself:

³¹ "CIA's Hottest Question," *Washington Post*, 14 March 1993.

³² Leonard Doyle, "French spies shop for trade secrets", *Independent* (London), 11 May 1993

³³ See <http://www.ita.doc.gov/td/advocacy>

Since its creation in 1993, the Advocacy Center has advocated on behalf of U.S. companies in the aerospace, infrastructure, energy and power, environment and other industries. We have a variety of success stories as a result of our advocacy efforts, showing the various ways the federal government supports U.S. companies in their efforts to secure contracts overseas.

Its methods were and are wide ranging:

Assistance can include a visit to a key foreign official by a high-ranking U.S. government official; direct support by U.S. officials (including Commerce and State Department officers) stationed at U.S. embassies; and coordinated action by U.S. government agencies to provide maximum assistance [...] ³⁴

38. The creation of the Center was also “to assist U.S. Government (USG) personnel in determining whether and to what extent USG support is appropriate in connection with a transaction involving U.S. interests”. The test was whether a particular bid would involve more than 50% U.S. content. Applicants for support were asked to complete a questionnaire, which could be filled in on the Internet. ³⁵ **AND HYPERLINK TO DOC 2-2** The form sought information to let the government “whether and to what extent a given bid is considered to be in the U.S. national interest”.
39. The creation of the Advocacy Center solved two of the three practical obstacles to using competitive intelligence effectively. The Center established criteria for defining whether a company was to be regarded as a U.S. company or not. (The question of what to do if two or more U.S. companies were competing for the same contract was resolved at the same time. Each would be helped to the same extent.) The Advocacy Center’s documentation did not explicitly state that intelligence organisations would work in support of its activities.
40. The new arrangements soon paid off. In April 1994, the U.S. Congress was told that in 1993 alone, as a result of intelligence work, American businesses had obtained contracts worth some \$6.5 billion out of a total of 51 contracts worth \$28 billion. ³⁶ By July 1994, CIA director Woolsey was asserting that “several billion dollars a year in contracts are saved for American business by our conducting that type of intelligence collection. We intend to continue to do it. It is relatively new. We are very - frankly - very good at it, and we have had some very positive effects on contracts for American businesses.” ³⁷ The same year, a report to the Congressional intelligence committee said that the “core of the intelligence community in this area [industrial espionage] has focused on alerting US policymakers about government-to-government lobbying efforts to disadvantage US firms seeking international trade. That report added:

A review of intelligence reporting since 1986 has identified about 250 cases of aggressive lobbying by foreign governments on behalf of their domestic industries that are competing against US firms for business overseas [...] Indeed, during the last

³⁴ See background documents on the U.S. government Advocacy Center provided to the Echelon committee; (1) Function statement by Department of Commerce Trade Promotion Co-ordinating Committee (TPCC) **HYPERLINK TO PAPER 2-1**

³⁵ At <http://www.ita.doc.gov/td/advocacy/question.htm>

³⁶ Letter from Colin Jellush, Intelligence Community Issues Division, to Don Mitchell, Select Committee on Intelligence, U.S. Senate, April 8, 1994, published in "Current and Projected National Security Threats to the United States and Its Interests Abroad," Hearing before the Select Committee on Intelligence, U.S. Senate, January 24, 1994

³⁷ "The Future Direction of Intelligence", address by James Woolsey to the Center for Strategic and International Studies, July 18, 1994, in Washington, D.C., 18 July 1994. Quoted in Windrem, *op cit* (note 000)

17 months US policymakers have been alerted some 72 times to specific cases where US firms were being disadvantaged in their efforts to win business that totals \$30 billion.³⁸

41. The continuing role of the CIA in commercial intelligence was described by director Woolsey in a briefing to the U.S. Senate early in 1995, shortly before he resigned because of a security scandal. He told the Senate:

"As an added benefit [of the intelligence networks], we will be able, in normal times, to use these networks to learn much that is of great use to our country on other subjects -e.g., [...]when a foreign country is trying to bribe its way into a contract to the detriment of American companies that play by the rules ...

"We also devote our economic analytical efforts to assess whether nations are skirting the rules of international trade by [...] exerting pressure to win contracts for their firms at the expense of American business and American jobs. This does not mean we are conducting economic espionage--we are not in business of spying for private firms. But it does mean that we bring these corrupt foreign practices to the attention of the White House and the State and Commerce Departments, who then seek redress--often successfully" (*emphasis added*)³⁹

42. From this testimony and other documentary sources, it is clear that the "levelling the playing field" policy on economic intelligence collection permits a far wider definition of "unfair competition" than the special case of bribery and corruption. During 1994 and subsequently, intelligence became a major factor in U.S. trade promotion. According to one study:

The U.S. intelligence community, including the National Security Agency and the CIA, had been plugged into a big room on the third floor of the Commerce Department's headquarters.⁴⁰

The same report quotes from a secret Department of Commerce report claiming that, by 1994, the U.S. "may have lost as much as \$40 billion through bribes by foreign competitors". The stated criterion for measuring bribery was "based on cases where the U.S. company lost in situations where it had a better product at a lower price than competitors. The details of the study remain secret".⁴¹

43. From an early stage, the Advocacy Center published accounts of "success stories", where business had allegedly been won against foreign competitors. These stories were distributed to Congress, and published on the web.⁴² A compilation of representative "success stories" has been prepared for the Committee.⁴³ The stories speak frequently of

³⁸ Jellish, *op cit*

³⁹ Testimony of R. James Woolsey, Director of Central Intelligence, in World Threat Assessment Brief, Hearing before the Select Committee on Intelligence, U.S. Senate, 10 January 1995

⁴⁰ John Fialka, "War by other means", W W Norton and Co, New York, 1997, p 96.

⁴¹ *Ibid*, p218.

⁴² At <http://www.ita.doc.gov/td/advocacy/advosucc.htm>

⁴³ See background documents on the U.S. government Advocacy Center provided to the Echelon committee; Financial and geographical analysis of "Success stories" **HYPERLINK to 2-4**

“intense” or “fierce” competition from European and other foreign firms as the justification for U.S. government intervention.

44. President Clinton’s Under Secretary of Commerce for International Trade, Jeffrey Garten, called the Advocacy Center “our economic war room”.⁴⁴ A photograph supplied by the Center in a 1995 publicity release⁴⁵ described its role as being at “the core of President Clinton’s National Export Strategy”. Its objective was:

To aggressively support U.S. bidders in global competitions where advocacy is in the national interest” **ADD HYPERLINK TO ADVOCACY CENTER PIC**

The role of the CIA in economic intelligence support

45. Declassified U.S. government documents show that the role of the intelligence agencies in the work of the Department of Commerce has been more extensive than is officially admitted by the U.S. government.
46. Early in 1994, Under Secretary Garten told a Washington meeting that the government was working on strategies for so-called “Big Emerging Markets”, where a special effort would be made.⁴⁶ The first country to be studied was Indonesia. Noting that “we have been surpassed by both Japan and the European Union as Indonesia’s major trading partners”, Garten reported that he had set up “an Interagency Working Group on Indonesia [...] [we are] beginning to create a commercial strategy for that country”. He added:

“Once the country strategy is finalised through the TPCC process the Indonesia Working Group will turn to developing ways to ensure the effectiveness of the strategy”.

47. Six months later, documents show that the CIA was intimately involved in this process. Declassified minutes of the Trade Promotion Co-ordinating Committee from 1994 show that the CIA’s role in drumming up business for the US was not limited to looking for bribery, or even lobbying by foreign governments. Minutes and distribution lists for meetings held in July and August 1994 show that at one meeting of the TPCC Advocacy/Finance Subgroup, 5 of 16 attendees were CIA officials. Three of them worked in the Office of Intelligence Liaison. The most senior, Bob Beamer worked at CIA headquarters. The minutes record that the CIA headquarters official was concerned with potential “primary competitors” to the U.S.:

“Bob Beamer suggested that any primary competitors known to the group for these projects should be included as background information [...] the matrix should be For Official Use Only”⁴⁷

⁴⁴ David Sanger, “How Washington Inc. Makes a Sale”, *New York Times*, 19 February 1995

⁴⁵ International Trade Administration, Department of Commerce, 22 March 1995

⁴⁶ Jeffrey Garten, Address to the National Association of Manufacturers in Washington, Washington D.C., 17 February 1994.

⁴⁷ See background documents on the U.S. government Advocacy Center provided to the Echelon committee; TPCC internal working papers, July – August 1994 **HYPERLINK TO 2-3**

48. These papers were obtained under the Freedom of Information Act because of concerns that a senior Department of Commerce official who also attended these meetings allegedly had undisclosed financial links to a major Indonesian company. Details were published in 1996.⁴⁸ By this time, following revelations in the UK, the “Office of Intelligence Liason” had been renamed the “Office of Executive Support”.⁴⁹ It remained, however, “a high-security office located inside the Commerce Department [...] It is staffed by CIA officials with top-secret security clearances and equipped with direct links from US intelligence agencies”.⁵⁰
49. The potential inputs to this system include data gathered at European NSA stations. For example, former London-based military intelligence attaché Colonel Dan Smith regularly received Comint product from Menwith Hill, while working at the U.S. Embassy in London until 1993. In 1998, he told the BBC that at Menwith Hill:

"In terms of scooping up communications, inevitably since their take is broadband, there will be conversations or communications which are intercepted which have nothing to do with the military, and probably within those there will be some information about commercial dealings [...]

Anything would be possible technically. Technically they can scoop all this information up, sort through it and find out what it is that might be asked for”.

Colonel Smith added, however, that “there is not policy to do this specifically in response to a particular company's interest.”⁵¹

Publicity for U.S. intelligence involvement in economic intelligence 1995-1996

50. More than two years before European politicians had heard of Echelon, news of how the U.S. Sigint and COMSAT intercept systems were bringing business to the U.S. was the subject of repeated reports in the press and on television. In January 1995, the *New York Times* reported on the collaboration between the CIA and the Advocacy Center:

“From the time it took office, the Clinton Administration made clear that the future of the C.I.A. - to say nothing of the justification for much of its budget today - lay in turning its resources to detailed, focused gathering of economic intelligence. Today, that is happening every day [...]

Now the [TPCC] committee and its spin-offs meet almost weekly, constantly revising a list of major projects around the world that have caught the attention of corporate executives, ambassadors, the C.I.A., or other agencies, and assessing American chances to win the business [...]

In the last 18 months Mr. Garten and others have worked closely with the agency to focus its attentions on the Big Emerging Markets -- "BEMs" in Commerce-

⁴⁸ Scott Shane, “Mixing business with spying; secret information is passed routinely to U.S. companies”, *Baltimore Sun*, 1 November 1966

⁴⁹ Department of Commerce Operational Order 10-6, <http://www.osec.doc.gov/bmi/10-6.htm>, 7 March 1996

⁵⁰ Scott Shane, *ibid*

⁵¹ "Uncle Sam's Eavesdroppers", Close Up North, BBC North, 3 December 1998; reported in "Star Wars strikes back", *Guardian*, 3 December 1998

speak -- and the race to win contracts for the power plants and hospitals, the airplanes and the airports that will keep those countries booming".⁵²

51. In December 1996, the U.S. power companies Enron, General Electric and Bechtel, concluded the first of a series of contracts worth \$2.5 billion to build a large new power station at Dabhol, about 100 miles south of Bombay, India. CIA information was allegedly used to help win the contract:

"Working just behind the scenes, as it often does these days, was the Central Intelligence Agency, assessing the risks of the project and scoping out the the competitive strategies of Britain and other countries that want a big chunk of the Indian market".^{53,54}

52. A second contract said to have been won with CIA support was the sale of an electronic surveillance system for the Amazon Basin, called SIVAM. As a result of this, the Raytheon corporation had beaten Thomson CSF. According to this report:

"Commerce lobbied [the] Brazilian Government, cleared red tape and enlisted help of CIA [...]"

As the competition reached a fever pitch, the CIA came in with reports that the French were offering large bribes to Brazilian officials with influence over the decision. "This was really brazen under-the-table stuff, and we had to counter it," one senior government official familiar with the deal said. American officials made it clear to Brazil's leadership that they knew what was going on, and -- based partly on data the agency gathered -- matched France's financing terms [...]"

President Clinton wrote a letter backing the American bid. The pressure worked. "This blew away the French," said one American official who was eager to cite the case as an example of the C.I.A.'s utility in the economic sphere"⁵⁵

53. A further report was published by the *Washington Post* a week later. The report referred to two other major contracts lost by France, a Saudi Arabian order for Airbus and military supplies and services in January 1994, and an Indonesian order for satellites that went instead to Hughes. Regarding the Saudi Arabian contract, there had been:

"A high-pressure campaign waged by the American government [which] persuaded the Saudis to give the entire airline contract to Boeing and McDonnell Douglas. Washington had employed its vast intelligence network - including CIA agents and, according to one source, the international eavesdropping capabilities of the National Security Agency - to sniff out French bribes and generous financing terms"⁵⁶

54. The alleged role of Echelon stations (not yet known by that name) in these events was first reported by NBC TV in May 1995. Reporter Mike Jensen said that relevant telephone calls

⁵² David Sanger, "How Washington Inc. Makes a Sale", *New York Times*, 19 February 1995

⁵³ *Ibid*

⁵⁴ See <http://www.ita.doc.gov/td/advocacy/Enronin1.htm>

⁵⁵ Sanger, *ibid*

⁵⁶ William Drozdiak, "French Resent U.S. Coups in New Espionage", *Washington Post*, 26 February 1995

and faxes had been “intercepted at secret US intelligence sites in Hong Kong, and Yakima, Washington, and Great Britain, yielding telephone conversations and the crackle of fax transmissions and financial data - evidence of bribes”.⁵⁷ The report added:

“Analysis is done at CIA headquarters, where a new era in spying has quietly begun - finding out which foreign companies and countries are going under the table to win international business contracts - contracts which otherwise could go to US companies”.⁵⁸

The report included filmed views of the Advocacy Center offices, with the comment that “intelligence [...] funnels into this trade-war room”. The programme reported that unspecified sources had provided details of three major contracts where “high-level whistleblowing has helped US companies win [...] contracts”:

- a \$6 billion airliner and military sale to Saudi Arabia
- a \$300 million Hughes telecommunications contract with Indonesia
- a \$1.4 billion Raytheon surveillance system contract with Brazil

Senator Arlen Specter, chairman of the Senate Intelligence Committee Chairman told NBC:

“It is definitely in line for the CIA to help the American competitor”

55. The *Baltimore Sun* elaborated on the Saudi Arabian example later in 1995, reporting that:

“Even as the intercepts flowing into Fort Meade have reached flood tide, NSA has been plucking from the gigabits of data a changing mix of intelligence. Commerce replaces communism: **The Soviet air force has been supplanted by the European aircraft consortium Airbus.** But the eavesdropping goes on [...] (*emphasis added*)

[In 1993 and 1994], **from a commercial communications satellite**, NSA lifted all the faxes and phone calls between the European consortium Airbus, the Saudi national airline and the Saudi government. The agency found that Airbus agents were offering bribes to a Saudi official. It passed the information to U.S. officials pressing the bid of Boeing Co” (*emphasis added*)⁵⁹

56. The continuation of these activities was reported by the *Baltimore Sun* a few months later:

“At least once a day, a CIA courier stops by the Department of Commerce in downtown Washington with a packet of top-secret information, **gathered around the globe by satellites picking up phone calls**, agents inside foreign governments and U.S. spies posing as businessmen abroad.

The CIA packets have gotten fatter in recent years, as U.S. spies have shifted their focus from Soviet missiles to international trade. And the nuggets of information inside can be used not only to make policy but to make a buck”.⁶⁰

⁵⁷ According to the producer of the report, these stations

⁵⁸ Tom Brokaw and Mike Jensen, *NBC Nightly News*, 16 May 1995.

⁵⁹ Scott Shane and Tom Bowman, “America’s fortress of spies”, *Baltimore Sun*, 3 December 1995.

⁶⁰ Scott Shane, “CIA data-sharing could lead to insider abuse”, *Baltimore Sun*, 1 November 1996

57. According interviews with Loch K Johnson, a staff member of the U.S.intelligence reform commission set up in 1993,⁶¹ security regulations prohibit passing secret intelligence directly to outsiders who lack the proper clearance. But:

“former intelligence officials and other experts say tips based on spying nonetheless regularly flow from the Commerce Department to U.S. companies to help them win contracts overseas [...] officials at the departments of Commerce, Treasury and State pass information to U.S. companies without revealing the intelligence source

Also according to Johnson:

"At Commerce, there's no code or book to consult to say when and what information can be passed to a U.S. company"⁶²

58. The same reports describes how, by passing economic intelligence through officials who “sanitise” it and protect intelligence sources, U.S. companies can be told if “a foreign competitor was about to win a contract sought by a U.S. company”. Johnson told the *Sun*:

“Someone in Commerce might call a U.S. executive and say ‘Look, you might have a better shot at that contract if you sweetened your bid a little’ [...] They pass on the information. But they usually do it in a very veiled fashion”

Former CIA Director Robert M. Gates said in the same report that decision to share with a company information derived from spying should never be made by an official on his own.

"The decision to assist a U.S. company should be made openly, on a policy level. Among other things, you have to find a way to sanitize the material to protect sources and methods"⁶³

59. The policy established under Woolsey was continued by his successors, according to testimony to Congress. John Deutch, who succeeded Woolsey as Director of Central Intelligence in 1996, told the Senate Intelligence Committee:

“I think that the Intelligence Community should be monitoring parts of the world where corrupt practices do lead to an unfair marketplace for American business.”

The chairman asked him how he handled information about corrupt practices that came to the attention of U.S. intelligence

SPECTOR: How do you handle those? [...] Pass them on to the policymakers?

DEUTCH: That's correct, yes sir. I think it's important we do that.

SPECTOR: Do you know what the practice of the policymakers then is by way of notifying the U.S. companies.

DEUTCH: I think that they are fairly aggressive in that, but we can get you a more complete answer. I'm not prepared to do that now.⁶⁴

⁶¹ Known as the Brown Commission, after its chairman Harold Brown

⁶² Shane, *ibid*

⁶³ *Ibid*

60. In a letter sent to Senator Spector soon after, Deutch confirmed that “economic intelligence [is] particularly noted by our customers for its usefulness”. This included:

"Intelligence Community efforts to help policymakers better understand how foreign governments have worked to undermine the efforts of US business to secure overseas contracts" ⁶⁵

61. Since the issue of economic espionage arose in Europe, there have been several informed U.S. responses. Although the administration has always refused to comment, the U.S. government arranged a briefing for foreign journalists on 10 March 2000. The briefing was given by former CIA director James Woolsey. Mr Woolsey described the European Parliament “IC2000” report as “intellectually honest”:

“In the Campbell report there are only two cases⁶⁶ mentioned in which, allegedly, American intelligence several years ago obtained [...] secret information regarding foreign corporations. One deals with Thomson-CSF in Brazil, one deals with Airbus in Saudi Arabia. [...]

Mr. Campbell's summation of those issues in one case is five lines long, in the other case it's six lines long, and he is intellectually honest enough that in both cases he devotes one line in each to the fact that the subject of American intelligence collection was bribery. That's correct. Not technological capabilities, not how to design wing struts, but bribery. And it is impossible to understand American intelligence collection, for my period of time anyway, with respect to foreign corporations and foreign government who sometimes assist them without realizing that that issue is front and center. [...]

Some of our oldest friends and allies have a national culture and a national practice such that bribery is an important part of the way they try to do business in international commerce [...]

We have spied on that in the past. I hope, although I have no immediate verification, that the United States government continues to spy on bribery. But whether it does or not, it seems to me that it should be understandable to anyone who reads the Campbell report, to anyone who thinks at all about whether American corporations need to steal technological secrets from foreign corporations, and anyone who is at all sophisticated about the way international trade and commerce works, that bribery is -- or should be in any case and certainly was in my time at the heart of U.S. intelligence's need to collect secret intelligence regarding foreign corporations and foreign governments' assistance to them” ⁶⁷

Woolsey added that this was not industrial espionage, in his view:

⁶⁴ “Current and Projected National Security Threats to the United States and its interests Abroad”, hearing before the Select Committee on Intelligence, U.S. Senate, 22 February 1996

⁶⁵ Letter from John Deutch, Director of Central Intelligence, through John Moseman, Director of Congressional Affairs, CIA, to Senator. Arlen Specter, Chair, Select Committee on Intelligence, U.S. Senate, 10 May 1996, published in "Current and Projected National Security Threats to the United States and its interests abroad," 22 February 1996

⁶⁶ In fact, the report contains 7 examples. The other five did not involve bribery

⁶⁷ James Woolsey., News briefing to the foreign press, Foreign Press Center, Washington D.C., 7 March 2000 (distributed by the US Information Office)

"I ... reserve the term industrial espionage to mean espionage for the direct benefit of an industry. ... I don't call it industrial espionage if the United States spies on a European corporation to find out if it is bribing its way to contracts in Asia or Latin America that it can't win honestly".⁶⁸

62. Soon after, Woolsey published an outspoken commentary in the *Wall Street Journal*. This report attracted critical attention and concern in Europe. Woolsey commented:

“Yes, my continental European friends, we have spied on you. And it's true that we use computers to sort through data by using keywords. Have you stopped to ask yourselves what we're looking for?

The European Parliament's recent report on Echelon [...] has sparked angry accusations from continental Europe that U.S. intelligence is stealing advanced technology from European companies so that we can -- get this -- give it to American companies and help them compete. My European friends, get real [...]

Most European technology just isn't worth our stealing. Why, then, have we spied on you? [...]

We have spied on you because you bribe. Your companies' products are often more costly, less technically advanced or both, than your American competitors'. As a result you bribe a lot ...

Stop blaming us and reform your own statist economic policies. Then your companies can become more efficient and innovative, and they won't need to resort to bribery to compete. And then we won't need to spy on you”.⁶⁹

63. This declared U.S. policy has continued to the present day, as has the purported justification offered by senior intelligence officials. In April 2000, CIA director George Tenet told a US Congressional enquiry into NSA activities:

“There are instances where we learn that foreign companies or their governments bribe, lie, cheat and steal their way to disenfranchise American companies. When we generate that information, we take it to other appropriate agencies, make them aware of it. They use that information through their other means and channels to see if they can assist an American company”⁷⁰

Examples and cases

64. Based on the reports cited above and the anthology of published “success stories”, I have analysed U.S. “advocacy” actions that may have affected European countries and companies in the period 1993 – 2000. This information is presented in the separate table.⁷¹ During this period. The U.S. government claims that its interventions to defeat alleged foreign bribery

⁶⁸ *Ibid*

⁶⁹ James Woolsey, Why We Spy on Our Allies, *Wall Street Journal*, 17 March 2000

⁷⁰ Testimony of Director of Central Intelligence George J. Tenet before the House Permanent Select Committee on Intelligence, 12 April 2000

⁷¹ See background documents on the U.S. government Advocacy Center provided to the Echelon committee; TPCC/Advocacy Center “Success Story statements” 1993-2000 **LINK AS BEFORE**
Financial and geographical analysis of “Success stories” **ADD HYPERLINK TO 2-4**

have resulted in contracts worth \$145 billion going to U.S. companies instead. In the selected and specific contracts listed in the table, the value of commerce gained by the United States during the period was \$24.7 billion. These summaries do not, of course, state whether intelligence activity played an important part (or no part) in gaining this business for the U.S, or not.

65. It is worth examining in more detail those specific cases where the use of economic intelligence has been alleged to have played a role. In summary, the contracts and interventions referred to above are:

Date	Country/subject	Sector	Value (\$ million)	Defeated country
1991	Syria (Homs)	Electric power	\$500	Japan
1993	Indonesia	Hughes satellites	\$300	France
Jan 1994	Saudi Arabia	Aircraft, supplies	\$6,000	France
Jul 1994	Brazil	Environment ⁷²	\$1,400	France
Dec 1994	Indonesia (Paiton)	Electric power	\$2,600	Not known
Dec 1996	India (Dahbol)	Electric power	\$2,500	UK and others
1993	GATT	Trade negotiations	N/A	France
1995	Vehicles (cars)	Emission standards	N/A	Japan
N/A	Vehicles (cars)	Luxury vehicle imports ⁷³	N/A	Japan
1997	APEC conference	Economic negotiations	N/A	Not known

66. The contracts listed total more than \$13 billion. Thus is 9% of the proclaimed total of trade won by the U.S. during the period.

Business and governments ethics in United States trade in the 1990s

67. This study has examined why and how the U.S. government policy of collecting and exploiting economic intelligence was developed in 1991 under the rubric of “levelling the playing field”, and put into practice from then to date. As noted, the heart of this policy includes a loudly expressed moral justification for such spying. This is centred on repeated public assertions that European and other governments and companies frequently pay bribes, whereas it asserted that American corporations never do so.
68. It has already been shown that the “levelling the playing field” policy is held to justify intelligence collection and dissemination for much lesser reasons, including subsidies, foreign government “pressure” or indeed any form of alleged unfairness, as seen by the United States. One report indicates that, in compiling statistics, bribery is presumed to have taken place whenever a losing American bidder believes that their tender was better and cheaper. It is noteworthy that, despite allegations of bribery exceeding \$100 billion in contract value, no detailed statistics have ever been published, nor have any substantiated

⁷² The Raytheon “success story” case is described at <http://www.ita.doc.gov/td/advocacy/Raytheon.htm>

⁷³ Scott Shane and Tom Bowman, “America’s fortress of spies”, *Baltimore Sun*, 3 December 1995

examples been given. The U.S. government have not pointed to a single case where a foreign competitor or official taking bribes has been indicted or convicted.

69. In summary, the U.S. government has not produced any evidence that its claims are justified. Given the recent and far reaching allegations that “foreign companies or their governments bribe, lie, cheat and steal their way to disenfranchise American companies”, this is a regrettable lapse on their part.⁷⁴ It is also worth observing that if the United States wishes to be respectful of the rule of law, the proper course of action on suspecting bribery is not to use the information solely for commercial gain, but to make it available through appropriate police-FBI channels in order to apprehend and prosecute corrupt officials and businessmen. This has apparently never been done or even (according to the available reports) attempted.
70. Although a detailed consideration of the legal and moral issues involved in commercial bribery and trade subsidies is outside the scope of this paper, it is useful to examine whether the second assertion – that U.S. companies never pay bribes - is supported by the evidence. It is not.
71. It is true that companies applying for U.S. government advocacy support have to sign an undertaking saying that they are aware of the Foreign Corrupt Practices Act, and that they will not pay bribes. In practice, this appears to be a worthless sanction. The two major power station projects mentioned above, (Paiton in Indonesia, and Dabhol in India) have each become national bywords for corruption and artificial cost inflation. Both stations have faced closure as their electricity has been too expensive to purchase. U.S. trade with Indonesia during this period has been shown to involve substantial corrupt payments to the family of former President Suharto.
72. Similar issues have affected the Raytheon contract in Brazil. Although no issue has arisen publicly in Saudi Arabia, it is widely known that business in Saudi Arabia requires commission payments to be made to members of the royal family. It would strain credulity to suggest that the \$6 billion contracts awarded to Boeing and others in 1994 were free from this requirement.
73. The degree of corruption involved in Indonesia’s Paiton project has been widely reported. In December 1998, the *Wall Street Journal* reported that the contract has been secured by giving Suharto’s daughter shares in the project for free. Suharto’s daughter, Siti Hediato Prabowo, was given a 0.75% stake in the \$2 billion project, worth \$15 million. Together with her brother in law, the Suharto family was given a total stake of 2.5%, worth \$50 million. The money was provided, in effect, as a gift from U.S. taxpayers.⁷⁵
74. An independent audit of the project in 1999 on behalf of the IMF by Arthur Anderson and Co have found overpricing of 72%, and that hundreds of millions of dollars spent on the project could not be accounted for. The audit found that engineering, procurement and construction costs of the Paiton 1 power plant, calculated at \$1.03 billion, “were inflated some 72% to \$1.77 billion”.⁷⁶ Because of this, the electricity it would produce would be too expensive for Indonesia to pay for.

⁷⁴ Testimony of Director of Central Intelligence George J. Tenet before the House Permanent Select Committee on Intelligence, 12 April 2000

⁷⁵ Peter Waldman and Jay Solomon, “Power deal with cuts for first family”, *Wall Street Journal*, 23 December 1998

⁷⁶ Jay Solomon, “Costs of power plant in India inflated”, *Wall Street Journal*, 26 December 2000

75. The Indian power project at Dabhol has been similarly affected by scandal, overpricing, and the absence of competitive bidding. Critics of the plant, including Indian trade unions, also accused Enron of resorting to bribes to win the contract,⁷⁷ although an Indian court did not uphold the allegations.
76. Raytheon's SIVAM contract in Brazil was similarly embroiled in scandal in November 1995. Police had wiretapped the home of Julio Cesar Gomes dos Santos, a top presidential aide. According to a transcript of phone calls published at this time, dos Santos and the local Raytheon representative, Jose Affonso Assumpcao, discussed paying bribes to the head of the Senate finance committee. Although there were no prosecutions, dos Santos resigned from his post. He was joined by air force Minister Mauro Gandra, who the tape revealed to have enjoyed hospitality from Raytheon. The revelations led to a Brazilian Senate enquiry and a three year delay in starting work on the project.⁷⁸

Conclusions

- This paper has set out, with detailed sources, the case that from 1992 to date Europe is likely to have sustained significant employment and financial loss as a result of the U.S. government policy of "levelling the playing field", introduced in 1991.
- This U.S. policy has included the use of commercially relevant intelligence supplied through the CIA to benefit U.S. business. Such intelligence may have included information obtained by COMSAT intercept and/or the Echelon system.
- It does not address whether the U.S. position that such interventions were and are justified by corrupt and or unfair behaviour by foreign competitors or governments are reasonable or, in fact, are true.
- It is not necessary to show that intelligence information has been given directly to U.S. corporations for economic damage to be assessed to have occurred.
- The available data does not sustain any accurate or precise conclusion with which to estimate the economic effect in cases where secret intelligence was involved.
- The boundaries of such estimates could lie between \$13 billion and \$145 billion. The only certain observation is that the exact figure will never be known. But it is highly probable that the economic loss to Europe has been substantial. It may amount to **tens of billions of dollars.**

January 2001

⁷⁷ "Indian court clears way for Enron", *Houston Chronicle*, 3 December 1996

⁷⁸ Michael S Serill, "Hello, how about a bribe?", *Time*, 11 December 1995; Jan Rocha, "Scandalous threat to image of new Brazil", *Guardian (UK)*, 29 December 1995; Tom Squitieri, "Raytheon hopes 3-year trek to \$1.4 Brazil deal near end – satellite system on hold", *USA Today*, 19 May 1997