BYU Law Review

Volume 1989 | Issue 2 Article 19

5-1-1989

Opening Doors in Foreign Market Trade Through the Telecommunications Trade Bill

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I. Introduction

Telecommunications trade[1] and development is experiencing rapid growth in the world market; continued growth seems certain.[2] Globally, the U.S. has only limited access to major foreign markets, while foreign access to the U.S. market is unrestricted. The passage of the 1988 Omnibus Trade Bill[3] is a positive step towards increasing the competitiveness of the United States in the world market. The Telecommunications Trade Bill,[4] contained within the Omnibus Trade Bill, establishes a comprehensive plan to attack telecommunications foreign market access barriers[5] which have disadvantaged the U.S. The Bill has received widespread support in the United States. Not surprisingly, response from foreign countries has been predominately negative.

This comment is presented in six sections. Section I, the Introduction, introduces the thesis that the Telecommunications Trade Bill is a first step in creating world trade balance in the telecommunications area. Section II traces the historical background leading to the implementation of the Bill and the response in the Senate. Section III expresses the foreign and

1. Telecommunications equipment is usually categorized into one of the following four types: (1) transmission equipment, the primary function of which is to forward information from one point to another i.e., cables or fibers; (2) switching apparatus, which is designed to connect terminals or group terminals to each other; (3) customer premises equipment, which is mainly terminal equipment such as telephones; and (4) cable, wire, and lightguide, which is used for transmission between apparatus not linked by radio. Boone, *Dialing for Foreign Telecommunications Market Access: Is The United States Getting a Busy Signal from Japan?*, 20 Vand. J. Transnat'l L. 495, 532, (1987).

2. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 1988 U.S. Code Cong. & Admin. News (102 Stat.) 1107, § 1371, (1988).

3. On August 23, 1988, the Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 1988 U.S. Code Cong. & Admin. News (102 Stat.) 1107, was enacted into law.

4. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 1988 U.S. Code Cong. & Admin. News (102 Stat.) 1107 (1988).

5. U.S. Chamber of Commerce, *The Omnibus Trade and Competitiveness Act of 1988-A Straightforward Guide to Its Impact on U.S. and Foreign Business*, at 13, col. 1, (1988) [hereinafter OTCA-A Straightforward Guide].

American reaction to the now enacted Trade Bill. Section IV sets forth the policy and provisions the U.S. Trade Representative will enforce, while Section V provides the probable impact of the Bill on the U.S. and on foreign nations. Section VI concludes by illustrating the benefits the Telecommunications Trade Bill will create for global trade.

This comment suggests that despite negative foreign reaction and valid fears regarding the possible impact of the Telecommunications Trade Bill, this provision of the Omnibus Trade Bill will aid not only American trade, but will also promote negotiations with foreign nations, a vital first step in creating a balance in world trade. The future of the procedure implemented by the Bill, ultimately depends upon foreign nations reducing government intervention and control, and allowing an increase in imports of American telecommunications equipment. In the end, a world market with equal access will have hopefully been established and guidelines agreed upon.

II. Evolution of Telecommunications Policies

A. *Historical Background*

Prior to 1984, there were few international guidelines regulating telecommunications trade. As a result, individual nations were free to adopt their own national practices,[6] inhibiting trade among nations. To promote foreign trade, a more uniform method of trading was needed.

The American telecommunications market was opened to foreign access as the result of two events. The first of which was deregulation and the second being the American Telephone and Telegraph (AT&T) divestiture.[7] Deregulation began in 1968 when the United States opened its market with respect to customer premises equipment in the FCC's *Carterfone*[8] decision. In 1971 the FCC opened direct competition in the provision of common carrier services, thus creating a market for transmission

6. *Id.*

7. The U.S. Department of Justice filed an antitrust suit against AT&T in 1974. AT&T and the Department of Justice entered into an antitrust consent decree in 1982. United States v. Western Elec. Co. (American Tel. & Tel. Co.), 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v.United States, 460 U.S. 1001 (1983), (quoting Boone, *supra* note 1 at 504).

8. In re Use of the Carterfone Device in Message Toll Telephone Service, 13 F.C.C.2d 420 (1968).

equipment. In 1980 the FCC completely deregulated customer premises equipment.[9]

Prior to the AT&T divesture in 1984, the American Bell System monopoly had dominated almost all areas of the telecommunications industry within the United States.[10] It manufactured its own internal telecommunications equipment and used it in operating its network. Foreign manufacturers had very little access in the U.S. market. The divesture loosened the tight hold the Bell System maintained in the manufacturing and distribution areas of telecommunications equipment and kept AT&T from exclusively using its own equipment.[11]

These two events, deregulation and the AT&T divesture, have assured foreign telecommunications suppliers full access to the U.S. market. By contrast, U.S. companies do not enjoy the same free access to the major foreign telecommunications markets.[12] For example the United States' standard for telephone equipment is that any equipment is acceptable so as long as it does not harm the phone system.[13] Japan, on the other hand, adopts a standard which effectively precludes the use of non-Japanese telephone systems.[14] Congress has reacted by demanding comparable treatment of U.S. firms in foreign countries.[15]

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9. *U.S. Int'l Trade Comm'n, Changes in the Telecommunications Industry and Impact on U.S. Telecommunications Trade*, Report to Sen. Comm. on Finance, Investigation No. 332-172 Under Section 332 of Tariff Act of 1930, USITC Publication 1542 (June 1984) [hereinafter USITC Pub. 1542], (quoting Boone, *supra* note 1 at 505).

10. AT&T maintained its dominance over domestic and foreign firms until the FCC decisions on customer premises equipment. Western Electric, the principal U.S. manufacturer of telecommunications equipment, had a multi-billion dollar captive market, facing virtually no competition from other manufacturers while the Bell System was intact. Bell's monopoly gave Western Electric its advantage because AT&T manufactured its own equipment with Western Electric. AT&T supplied telecommunications equipment to approximately 85% of U.S. subscriber lines. Boone, *supra* note 1 at 505.

11. The AT&T divestiture separated 22 Bell operating companies (BOC's), such as Southwestern and Mountain Bell, into seven regional holding companies wholly independent of AT&T. Prior to the divestitures, BOCs were primary purchasers of telecommunications equipment manufactured by Western Electric. Today, these operating companies are not required to purchase their supplies and equipment from Western Electric but are free to buy at competitive prices in the open market. Boone, *supra* note 1, at 505-506.

12. *OTCA-A Straightforward Guide*, *supra* note 5, at 13, col. 1.

13. *U.S. Negotiators Plan to Return to Tokyo for Telecommunications Talks April 15*, (hereinafter *U.S. Negotiators Plan to Return to Tokyo*), The Bureau of National Affairs, Inc.; Daily Report for Executives, April 10, 1985 at L-7.

14. *Bill Would Stop Telecommunications Sales in U.S. until Japanese Market is Opened*, (hereinafter *Bill Would Stop Telecommunications Sales*), The Bureau of National Affairs, Inc.; Daily Report for Executives, March 26, 1985, at L-5.

15. *Id.*

Past administrative efforts to remove foreign barriers preventing full and fair competition have been criticized by Congress and by U.S. industry.[16] Senators supporting legislation to open markets viewed Administrative actions as fragmentary and ineffective.[17] The senators and top labor and industry executives[18] together believed a more concentrated systematic approach was in order.[19]

The damage to American firms from failure to implement trade policies for attacking foreign barriers earlier has been costly. The Japanese telecommunications market for example, has grown since 1980 by about $200 million per year.[20] In terms of apparent consumption, the total growth was about $5 billion in 1980. In 1984, however, the United States' trade deficit with the Japanese in the telecommunications area was $900 million.[21]

In 1985, the trade gap in telecommunications equipment between the United States and foreign nations continued to widen. Trade with Japan and Canada had deteriorated[22] and was not offset by surpluses with other nations, leaving a deficit of $1.12 billion. This figure covered telephone and telegraph equipment, as well as radio and television equipment.[23] U.S. response was limited to two alternatives, to respond in kind by restricting access to its markets or alternatively to promote an open world economy.

B. *Response to the Telecommunications Trade Imbalance*

The response to the international telecommunications situation came from Sen. John Danforth (R-Mo), chairman of the Finance International Trade Subcommittee who proclaimed in 1985 "[i]f foreign markets are going to be closed to us, we have

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16. *OTCA-A Straightforward Guide*, *supra* note 5, at 13, col. 1.

17. *Id.*

18. *Finance Panel Sees Need for Telecommunications Legislation*, The Bureau of National Affairs, Inc.; Daily Report for Executives, May 6, 1985 at L-2.

19. *OTCA-A Straightforward Guide*, *supra* note 5, at 13, col. 1.

20. *Bill Would Stop Telecommunications Sales*, *supra* note 14, at L-5.

21. *Id.*

22. According to Commerce figures, the telecommunications trade gap with Japan totaled $2.37 billion for 1985, creating a 26 percent increase over the actual deficit of $1.88 billion recorded for 1984. For Canada, the figures show a trade deficit for a total annual shortfall of $234 million—an increase of 32 percent over the $178 million gap recorded in 1984.

23. *Commerce Department Figures Show Rising Deficit in Telecommunications Trade*, The Bureau of National Affairs, Inc.; Daily Report for Executives, September 17, 1985 at L-2.

to have some kind of leverage to open them."[24] The Danforth Bill called for systematic use of access to the United States market as negotiating leverage and strict enforcement of existing trade agreements[25] to open the foreign markets, thus producing more domestic employment opportunities.[26] Communications firms[27] also developed a set of proposals to be included in the Danforth Bill.[28]

The industry recommendations included establishing timetables for the U.S. to take measures against trading partners such as Japan and European countries which fail to open up their markets to American companies. The purpose behind the proposals[29] was to provide the President with wide authority to tailor the U.S. response to imbalances with trading partners[30] on an individual basis.[31]

Senator John Chafee (R-RI), who offered his own legislation,[32] stated that the real problem is not our imbalance with Japan, but rather the inaccessibility to the Japanese market[33] of American products which are acknowledged to be superior to the

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24. *Finance Panel Sees Need*, *supra* note 18, at L-2.

25. Boone, *supra* note 1, at 532.

26. *Id.*

27. The proposals were hammered out by a telecommunications "market-access" working group headed by the U.S. Chamber of Commerce. Participants included the American Electronics Association, the Computer Business Equipment Association of Data Processing Service organizations, and major equipment firms ranging from American Telephone & Telegraph Co. to International Business Machines Corp. *Industry Works to Hone Trade Proposals for Senator Danforth*, (hereinafter *Industry Works to Hone Trade Proposals*), The Bureau of National Affairs, Inc.; Daily Report for Executives, March 27, 1985 at L-4.

28. *Id.*

29. The proposals were under review at a critical time when negotiators from both the U.S. and Japan were striving to create an agreement on sales of telecommunications products in Japanese markets. They had hoped to do this by April 1, 1985 when the state-owned Nippon Telegraph & Telephone Public Corp. (NTT) was to be deregulated. *Id.* at L-4. Trade Representative William Brock announced that the Administration would consult with Japan regarding the NTT agreement due to the "unsatisfactory" level of NTT purchases of U.S. telecommunications equipment. The industry is said to be concerned that NTT had not established a long-term relationship with U.S. suppliers. *U.S. Negotiators Plan to Return to Tokyo*, *supra* note 13, at L-7.

30. This approach contrasts Danforth's earlier proposal when he backed legislation that would have required the President to raise import tariffs on nations found unresponsive to U.S. efforts to open up their markets.

31. *U.S. Negotiators Plan to Return to Tokyo*, *supra* note 13, at L-7.

32. S. 728, 99th Cong., 1st Sess. 1 (1985). Chafee's Bill received little support and was not seriously considered in drafting the Telecommunications Trade Bill.

33. Senator Chafee's argument lacks convincing recognition since the imbalance of Japanese trade comes from the inaccessibility of the Japanese market. The symptom and the cause are mutually exclusive.

Japanese products.[34] In addition, Commerce Secretary Malcolm Baldrige stated that the Japanese telecommunications ordinances as originally drafted put foreign suppliers at a serious disadvantage and did injustice to Japanese consumers.[35]

Thus, the pressure was kept on the Administration to adopt a telecommunications bill to cure the trade imbalance. The telecommunications bill first offered by Sen. Danforth,[36] the Telecommunications Trade Bill of 1984 was considered an amendment to the Trade Bill of 1974. In 1985 and in 1987, Danforth reintroduced the Bill. The 1987 Bill was eventually incorporated into the Senate's Omnibus Trade and Competitiveness Act, of which the Telecommunications Act, drafted by Danforth, was a part. This Act was then slightly revised and was adopted by both Houses. The Omnibus Trade and Competitiveness Act was finally signed into law by President Reagan on August 23, 1988,[37] beginning a new era of telecommunications trade policy.

III. Reactions to the Telecommunications Trade Bill

A. *Reaction Abroad*

Reaction to the Telecommunications Trade Bill abroad has been predominately negative with the exception of Canada. Valid concerns of American protectionism characterize the views

34. *Bill Would Stop Telecommunications Sales, supra* note 14, at L-5.
35. *Id.*
36. Danforth introduced other legislation in 1984 that would have more than doubled tariffs on telecommunications equipment imported from countries that failed to enter into trade agreements with the United States. *Redrafted Telecommunications Bill Out Soon*, [2 Current Reports] Int'l Trade Rep. (BNA) 239 (Feb. 13, 1985). Danforth redrafted the 1984 bill into the one (S. 942) he offered in 1985. The Senate Finance Committee approved and amended S. 942 on September 17, 1985, primarily redrafting its implementation timetables. *Senate Finance Approves Bill to Improve Exports of U.S. Telecommunications Products*, [2 Current Reports] Int'l Trade Rep. (BNA) 1155 (Sept. 18, 1985), (quoting Boone, *supra* note 1 at 532.)
37. Congress stated in the Trade Bill these specific purposes: (1) to foster the economic and technological growth of, and employment in, the U.S. telecommunications industry; (2) to secure a high-quality telecommunications network for the benefit of the people of the U.S.; (3) to develop an international consensus in favor of open trade and competition in telecommunications products and services; (4) to ensure that countries which have made commitments to open telecommunications trade fully abide by those commitments; and (5) to achieve a more open world trading system for telecommunications products and services through negotiation and provision of mutually advantageous market opportunities for U. S. telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 1988 U.S. Code Cong. & Admin. News (102 Stat.) 1107, § 1372 (b), (1988).

of foreign markets. At a recent Omnibus Trade Bill seminar,[38] Richard Wright,[39] represented the view of the European communities. He stated that the Omnibus Trade Bill as a whole put limits on how much foreign governments can intervene and that the United States acts as judge and jury as to what free trade is by implementation of the Bill. In regard to telecommunications, he further explained that a mutually advantageous market is desired, but that the United States has implemented the opposite by demanding a preference for U.S. telecommunications products.[40]

The Japanese government asserted that the Senate legislation "is not only a discriminatory bill singling out Japan but also a threat to the entire free trade system itself."[41] Tokyo maintained that it has done its utmost to open up the country's telecommunications market to a degree comparable to that of the U.S. market, and promised that the ordinances will be implemented under the principles of non-discrimination, simplicity, and transparency.[42] The Japanese government further conceded that the current trade imbalance is not desirable, and said it would work to improve the situation.[43]

Furthermore, Chinese ambassador to the U.S. Han Xu called for the U.S. Congress to drop a provision considered unfair on China trade in the Trade Bill. He spoke against rising protectionism in the U.S. as evidenced by restrictions on China's textile exports to the U.S. market. He said it is unfair and unjustified to blame the huge U.S. trade deficit on Chinese imports. He also called for the U.S. to improve its policy on technology sales to China. He said rigid controls can only hurt the U.S. exports in their push into the Chinese market.[44]

Canada's reaction to the Trade Bill has been the most positive of the foreign nations. Canada is hoping the same opportunities given to the United States and American corporations will

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38. The 1988 Omnibus Trade Bill: Issues and Perspectives, Brigham Young University, J. Reuben Clark Law School, Provo, Utah, January 13-14, 1989.

39. Richard Wright is First Secretary for Commercial for the Delegation of the Commission of the European Communities in Washington, D.C.

40. Mr. Wright represented the European countries at the Omnibus Trade Seminar held at Brigham Young University.

41. *U.S. Negotiators Plan to Return to Tokyo, supra* note 13, at L-7.

42. *Id.*

43. *Id.*

44. Zhao Zijian, *Round-Up: Senate China Trade Caucus a Success*, Xinhua General Overseas News Service, Washington, November 20, 1987.

be open to Canadian companies.[45] According to James Matkin,[46] Canada is not looking for reciprocity (a one-for-one exchange), but rather fair national treatment.[47]

The concerns of these foreign countries are not without some merit. The Telecommunications Trade Bill was developed by the United States to enhance American trade. It is unilateral in that it provides a solution to the American telecommunications trade problem, but it also provides a foundation for aiding world trade as a whole. By forcing foreign nations to buy American products, the U.S. is attempting to bring about a balance. Americans have been buying foreign and will continue to do so, however the U.S. will now limit its purchases to those countries who buy American. This trade reciprocity will promote the manufacturing of better quality telecommunications equipment by creating a more competitive market. Better technology can only benefit equipment users throughout the world.

B. American Reaction

The fears expressed by foreign countries have received some sympathy in the United States, but the reaction to the Telecommunications Trade Bill has been more positive than negative. Many telecommunications industry executives have expressed enthusiasm and support for the legislation.[48]

Not all industry executives, however, were supportive of legislation. Those that sympathized with the foreign nations stressed that U.S. trade problems are the result of Defense De-

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45. James G. Matkin, *Canada, The Trade Bill, and Free Trade*, presented at The 1988 Omnibus Trade Bill: Issues and Perspectives seminar, Brigham Young University, J.Reuben Clark Law School, January 13-14, 1989.

46. Mr. Matkin is President and Chief Executive Officer of the Business Council of British Columbia.

47. Matkin, *supra* note 45.

48. Thomas Campobasso, representing the Electronic Industries Association, stated that only Congress is in a position to redress the serious and potentially critical imbalance in market opportunities which currently exists in the industry sector. *Finance Panel Sees Need, supra* note 18, at L-2. William Moore, president of the American Electronics Association, expressed his frustration over trade relations with Japan. To have the second-largest market in the free world constrained in its access is simply intolerable. The U.S. cannot allow Japanese suppliers to take over industrial communications manufacturing—satellites, computers, semiconductors, and other high-technology markets—as they did consumer electronics markets. *Industry works to Hone Trade Proposals, supra* note 27, at L-4.

partment restrictions on high-technology exports and an overvalued dollar, a result of the federal budget deficit.[49]

Although the negative foreign and American reaction and foreign fears connected with the implementation of the Telecommunications Trade Bill are valid, they are not expository of the potential effects of the new law. To understand the reach of the Bill, one must inspect its provisions and apply them to world trade.

IV. Provisions of the Telecommunications Trade Bill

Congress, in the Telecommunications Act, found that the United States can improve prospects for the growth of its exports of telecommunications products and services, its export-related employment and consumer services, and the continuance of its technological leadership.[50] Although favoring the U.S., the Telecommunications Trade Bill more importantly sets forth a method to balance world trade, by allowing the U.S. to enjoy trade with foreign nations, but also by giving other nations guidelines by which to trade among themselves. The U.S. has taken the initiative in hopes of furthering trade of its own products and services as well as those of foreign nations. The Bill proposes to restructure world telecommunications trade through the many sections[51] comprising the telecommunications trade provision.

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49. Edwin Spievack, president of North American Telecommunications Association, an organization which includes foreign-based manufacturers, plus suppliers and distributors, said the bill would trigger a catastrophic trade war, which would harm American consumers . . . and return control of the U.S. telecommunications equipment industry to AT&T. *Finance Panel Sees Need*, *supra* note 18, at L-2.

50. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 1988 U.S. Code Cong. & Admin. News (102 Stat.) 1107, § 1372, (1988).

51. The sections of the Telecommunications Trade provision are:

§ 1371. Short Title
§ 1372. Findings and Purposes.
§ 1373. Definitions.
§ 1374. Investigation of Foreign Telecommunications Trade Barriers.
§ 1375. Negotiations in Response to Investigation.
§ 1376. Actions to be Taken if No Agreement Obtained.
§ 1377. Review of Trade Agreement Implementation by Trade Representative.
§ 1378. Compensation Authority.
§ 1379. Consultations.
§ 1380. Submission of Data; Action to Ensure Compliance.
§ 1381. Study on Telecommunications Competitiveness in the United States.
§ 1382. International Obligations.

A. *Investigation of Foreign Trade Barriers; Negotiated Solutions*

Three key aspects of the new law will help the U.S. come to a series of agreements with foreign countries. First, the United States Trade Representative will conduct an investigation to identify countries with the most egregious trade policies—priority foreign countries.[52] To do this, she will examine the nature and significance of the acts, policies, and practices that deny market opportunities to telecommunications products and services of United States firms.[53] She will also examine the economic benefits (actual and potential) accruing to foreign firms from open access to the United States market, the potential size of the market of a foreign country, the potential to increase United States exports, and measurable progress being made to eliminate the objectionable acts, policies, or practices.[54]

In response to the Trade Representative's investigation, the second step invites negotiations between the President of the United States and a foreign country for the purpose of entering into a bilateral or multilateral trade agreement.[55] The Trade Bill establishes both general[56] and specific[57] negotiating objectives

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52. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1107, § 1374 (b), (1988).

53. *Id.*

54. *Id.*

55. *Id.* § 1375 (a), (1988).

56. The general objectives include; (1) obtaining multilateral or bilateral agreements that provide mutually advantageous market opportunities for trade, (2) correcting imbalances in these opportunities from reductions in barriers to the access of telecommunications products and services, and (3) to increase United States exports of these products and services. *Id.* § 1375 (c), (1988).

57. *Id.* § 1375 (d). The specific negotiating objectives of the U.S. as set forth in the Telecommunications Trade Bill are to obtain (1) national treatment (2) most favored nation treatment (3) nondiscriminatory procurement policies (4) reduction or elimination of customs duties (5) elimination of subsidies, violations of intellectual property and other unfair trade practices that distort international trade (6) elimination of investment barriers (7) assurances that any requirement for registration be limited to the certification by the manufacturer that the products meet the standards established by the foreign country for preventing harm to the network or network personnel (8) open participation in the standards-setting processes used in foreign countries regarding telecommunications products and services; (9) the ability to have telecommunications products approved and registered by type; (10) access to the basic telecommunications network in foreign countries on reasonable and nondiscriminatory terms; (11) nondiscriminatory procurement of telecommunications products and services by foreign entities that provide local exchange telecommunications services which are owned, controlled, or regulated by foreign governments; and (12) monitoring and effective dispute settlement mechanisms to facilitate compliance with matters referred to above.

which the President is expected to use as guidelines while negotiating with priority foreign countries. He is given the power to refine or modify the specific objectives in order to respond to circumstances arising during the negotiating period, including changed practices by the priority foreign country, tangible substantive developments in multilateral negotiations, changes in competitive positions, technological developments, or any other relevant factors.[58]

The established timetables for reaching agreement with foreign priority countries, the third aspect of the new law, permit the U.S. Trade Representative five months from the designated enactment date to complete the investigation. If agreement is not reached for each priority country within eighteen months of the law's enactment, the President may receive up to two one-year extensions, provided he reports to the Congress that substantial progress is being made and additional negotiations are needed.[59]

B. *Actions to be Taken if No Agreement is Reached*

If the President fails to reach an agreement with the foreign priority country within the time limits established, he may elect to terminate or suspend any portion of a trade agreement with respect to any U.S. duty or trade restriction on a telecommunications product, use any retaliation described in Section 301,[60] prohibit U.S. Government purchases of specified telecommunications products, increase domestic preferences for U.S. Government purchases, suspend any waiver of domestic preferences, deny federal funds or credits for the purchase of specified foreign products, and suspend benefits under the U.S. Generalized System of Preferences.[61] The President must first consider action that most directly affects trade in telecommunications products and services, but he can also take action in other trade sectors.[62]

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58. *Id.* § 1375 (b), (1988).

59. *Id.* § 1376 (c).

60. Section 301 of the 1974 Act authorizes the President to take a variety of actions to improve U.S. companies' access to foreign markets. A principal purpose of the 1988 Act is to increase the likelihood of U.S. action against foreign unfair trade practices, including actually requiring U.S. retaliation against trade agreement violations by other countries. *OTCA-A Straightforward Guide*, *supra* note 4, at 7.

61. The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, 1988 U.S. CODE CONG. & ADMIN. NEWS (102 Stat.) 1107, § 1376 (a) and (b), (1988).

62. *Id.* at § 1376 (a).

C. *Review of Trade Agreement Implementation by Trade Representative*

Further checks on foreign trade partners are included in the Trade Bill. The United States Trade Representative must review the operation and effectiveness of each trade agreement negotiated and in force and every other trade agreement regarding telecommunications products or services that is in force with respect to the United States.[63] In each review the Trade Representative will determine whether any act, policy, or practice of the foreign country that has entered into the agreement is not in compliance with the terms of the agreement or otherwise denies, within the context of the terms of the agreement, to telecommunications products and services of United States firms mutually advantageous market opportunities in that foreign country.[64]

In summary, the Bill remedies the trade imbalance by not only setting general objectives, but by also establishing criteria for implementation. The preliminary investigation begins the process whereby negotiations can occur. Negotiations lead to trade talks and to the exchange of products and services. The U.S took the initial step in correcting the telecommunications trade imbalance, primarily because we were on the short end of the trading process. Any other nation was free to implement its own policy, but by failing to do so earlier, foreign countries are now subject to the American provision.

Despite forced compliance by the U.S., the process and the outcome are both fair and equitable to all involved and can be achieved if enough cooperation is given. Foreign nations are able to trade their telecommunications products and services with the U.S., while receiving high quality American equipment for use in their own markets. Americans will enjoy a competitive advantage since priority foreign countries are forced to buy American, but with the vast amount of American purchases of foreign equipment, a balance in world trade will occur.

V. Probable Impact of the Telecommunications Trade Bill

A. *Impact on American Companies and U.S. Policy*

The enactment of the Telecommunications Trade Bill should have a positive impact on American companies and U.S.

63. *Id.* § 1377.
64. *Id.* § 1377.

policy. Japan has already begun to open its market and to reduce its telecommunications regulations on equipment and trade. The provisions of the Bill will provide changes in the way American firms deal with foreign companies. The first likely impact of the Telecommunications Trade Bill will be greater negotiating leverage,[65] allowing the U.S. greater access to trade. Since many foreign companies are government owned and controlled, the threat of losing the American market is sufficient to compel negotiations with other nations in telecommunications trade. In China, there is agreement within the Chinese leadership that the U.S. should improve its trade policy towards the People's Republic and that the policy of reform and opening to the outside world will continue.[66]

Greater cooperation and coordination between Congress and various Executive Branch agencies in addressing telecommunications problems[67] may also be realized. In the initial phase of the Telecommunications Trade Bill, the Senate experienced difficulties with the Administration in implementing uniform trade provisions. Lack of communication between Congress and the Administration was at fault. The Trade Bill represents a greater willingness to work together.

B. *Probable Impact on Foreign Countries*

Enactment of the Trade Bill will also affect foreign companies. The first effect is the loss of the special advantages of a protected home-market base,[68] creating increased benefits to users of telecommunications equipment and services.

If foreign nations choose to keep their markets closed, a second impact on foreign companies will be restrictions on foreign access to the United States' telecommunications market.[69]

VI. CONCLUSION

The proposals set forth in the Telecommunications Trade Bill exemplify the concern that the United States has been and continues to be excluded from participating in world telecommunications trade although it has opened its own doors to for-

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65. *OTCA-A Straightforward Guide*, *supra* note 5, at 13, col. 1.
66. Zhao Zijian, *supra* note 44.
67. *OTCA-A Straightforward Guide*, *supra* note 5, at 13, col. 1.
68. *Id.* at 14, col. 1.
69. *Id.* at 14, col. 2.

eign equipment. The Bill promotes U.S. products and services, while providing an example for other countries to follow. Investigating priority foreign countries and bringing them to the negotiating table benefits the U.S. as well as foreign countries by creating a more balanced trading policy. Negotiation creates opportunity for all who participate. The United States has opened its market and if the prospects continue, global telecommunications trade will thrive.

Colette E. Neuner