

# Omnibus Trade and Competitiveness Act of 1988

## TITLE I—TRADE, CUSTOMS, AND TARIFF LAW

### Subtitle C—Response to Unfair International Trade Practices

#### PART 4—TELECOMMUNICATIONS TRADE

##### SEC. 1371. SHORT TITLE.

This part may be cited as the “Telecommunications Trade Act of 1988”.  
(19 U.S.C. 3101 note)

##### SEC. 1372. FINDINGS AND PURPOSES.

(a) FINDINGS. —The Congress finds that—

(1) rapid growth in the world market for telecommunications products and services is likely to continue for several decades;

(2) the United States can improve prospects for—

(A) the growth of—

(i) United States exports of telecommunications products and services,  
and

(ii) export-related employment and consumer services in the United  
States, and

(B) the continuance of the technological leadership of the United States,

by undertaking a program to achieve an open world market for trade in telecommunications products, services, and investment;

(3) most foreign markets for telecommunications products, services, and investment are characterized by extensive government intervention (including restrictive import practices and discriminatory procurement practices) which adversely affect United States exports of telecommunications products and services and United States investment in telecommunications;

(4) the open nature of the United States telecommunications market, accruing from the liberalization and restructuring of such market, has contributed, and will continue to contribute, to an increase in imports of telecommunications products and a growing imbalance in competitive opportunities for trade in telecommunications;

(5) unless this imbalance is corrected through the achievement of mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries, the United States should avoid granting continued open access to the telecommunications products and services of such foreign countries in the United States market; and

(6) the unique business conditions in the worldwide market for telecommunications products and services caused by the combination of deregulation and divestiture in the United States, which represents a unilateral liberalization of United States trade with the rest of the world, and continuing government intervention in the domestic industries of many other countries create a need to make an exception in the case of telecommunications products and services that should not necessarily be a precedent for legislating specific sectoral priorities in combating the closed markets or unfair foreign trade practices of other countries.

(b) PURPOSES. — The purposes of this part are —

(1) to foster the economic and technological growth of, and employment in, the United States telecommunications industry;

(2) to secure a high quality telecommunications network for the benefit of the people of the United States;

(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 United States telecommunications exporters and their subsidiaries in those markets in which barriers exist to free international trade.

(19 U.S.C. 3101)

#### SEC. 1373. DEFINITIONS.

For purposes of this part —

(1) The term “Trade Representative” means the United States Trade Representative.

(2) The term “telecommunications product” means —

(A) any paging devices provided for under item 685.65 of such Schedules, and

(B) any article classified under any of the following item numbers of such Schedules:

684.57	684.67	685.28	685.39
684.58	684.80	685.30	685.48
684.59	685.16	685.31	688.17
684.65	685.24	685.33	688.41
684.66	685.25	685.34	707.90.

(19 U.S.C. 3102)

SEC. 1374. INVESTIGATION OF FOREIGN TELECOMMUNICATIONS TRADE BARRIERS.

(a) IN GENERAL. — The Trade Representative shall conduct an investigation to identify priority foreign countries. Such investigation shall be concluded by no later than the date that is 5 months after the date of enactment of this Act.

(b) FACTORS TO BE TAKEN INTO ACCOUNT. — In identifying priority foreign countries under subsection (a), the Trade Representative shall take into account, among other relevant factors —

(1) the nature and significance of the acts, policies, and practices that deny mutually advantageous market opportunities to telecommunications products and services of United States firms;

(2) the economic benefits (actual and potential) accruing to foreign firms from open access to the United States market;

(3) the potential size of the market of a foreign country for telecommunications products and services of United States firms;

(4) the potential to increase United States exports of telecommunications products and services, either directly or through the establishment of a beneficial precedent; and

(5) measurable progress being made to eliminate the objectionable acts, policies, or practices.

(C) REVOCATIONS AND ADDITIONAL IDENTIFICATIONS. —

(1) The Trade Representative may at any time, after taking into account the factors described in subsection (b) —

(A) revoke the identification of any priority foreign country that was made under this section, or

(B) identify any foreign country as a priority foreign country under this section, if information available to the Trade Representative indicates that such action is appropriate.

(2) The Trade Representative shall include in the semiannual report submitted to the Congress under section 309(3) of the Trade Act of 1974 a detailed explanation of the reasons for the revocation under paragraph (1) of this subsection of any identification of any foreign country as a priority foreign country.

(d) REPORT TO CONGRESS. — By no later than the date that is 30 days after the date on which the investigation conducted under subsection (a) is completed, the United States Trade Representative shall submit a report on the investigation to the President and to appropriate committees of the Congress.

(19 U.S.C. 3103)

SEC. 1375. NEGOTIATIONS IN RESPONSE TO INVESTIGATION.

(a) IN GENERAL. — Upon —

(1) the date that is 30 days after the date on which any foreign country is identified in the investigation conducted under section 1374(a) as a priority foreign country, and

(2) the date on which any foreign country is identified under section 1374(c)(1)(B) as a priority foreign country,

the President shall enter into negotiations with such priority foreign country for the purpose of entering into a bilateral or multilateral trade agreement under part 1 of subtitle A which meets the specific negotiating objectives established by the President under subsection (b) for such priority foreign country.

(b) ESTABLISHMENT OF SPECIFIC NEGOTIATING OBJECTIVES FOR EACH FOREIGN PRIORITY COUNTRY. —

(1) The President shall establish such relevant specific negotiating objectives on a country-by-country basis as are necessary to meet the general negotiating objectives of the United States under this section.

(2)(A) The President may refine or modify specific negotiating objectives for particular negotiations in order to respond to circumstances arising during the negotiating period, including —

- (i) changed practices by the priority foreign country,
- (ii) tangible substantive developments in multilateral negotiations,
- (iii) changes in competitive positions, technological developments, or
- (iv) other relevant factors.

(B) By no later than the date that is 30 days after the date on which the President makes any modifications or refinements to specific negotiating objectives under subparagraph (A), the President shall submit to appropriate committees of the Congress a statement describing such modifications or refinements and the reasons for such modifications or refinements.

(c) GENERAL NEGOTIATING OBJECTIVES. — The general negotiating objectives of the United States under this section are —

(1) to obtain multilateral or bilateral agreements (or the modification of existing agreements) that provide mutually advantageous market opportunities for trade in telecommunications products and services between the United States and foreign countries;

(2) to correct the imbalances in market opportunities accruing from reductions in barriers to the access of telecommunications products and services of foreign firms to the United States market; and

(3) to facilitate the increase in United States exports of telecommunications products and services to a level of exports that reflects the competitiveness of the United States telecommunications industry.

(d) SPECIFIC NEGOTIATING OBJECTIVES. — The specific negotiating objectives of the

United States under this section regarding telecommunications products and services are to obtain

(1) national treatment for telecommunications products and services that are provided by United States firms;

(2) most-favored-nation treatment for such products and services;

(3) nondiscriminatory procurement policies with respect to such products and services and the inclusion under the Agreement on Government Procurement of the procurement (by sale or lease by government-owned or controlled entities) of all telecommunications products and services;

(4) the reduction or elimination of customs duties on telecommunications products;

(5) the elimination of subsidies, violations of intellectual property rights, and other unfair trade practices that distort international trade in telecommunications products and services;

(6) the elimination of investment barriers that restrict the establishment of foreign-owned business entities which market such products and services;

(7) assurances that any requirement for the registration of telecommunications products, which are to be located on customer premises, for the purposes of—

(A) attachment to a telecommunications network in a foreign country, and

(B) the marketing of the products in a foreign country,

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) transparency of, and open participation in, the standards-setting processes used in foreign countries with respect to telecommunications products;

(9) the ability to have telecommunications products, which are to be located on customer premises, approved and registered by type, and, if appropriate, the establishment of procedures between the United States and foreign countries for the mutual recognition of type approvals;

(10) access to the basic telecommunications network in foreign

countries on reasonable and nondiscriminatory terms and conditions (including nondiscriminatory prices) for the provision of value-added services by United States suppliers;

(11) the nondiscriminatory procurement of telecommunications products and services by foreign entities that provide local exchange telecommunications services which are owned, controlled, or, if appropriate, regulated by foreign governments; and

(12) monitoring and effective dispute settlement mechanisms to facilitate compliance with matters referred to in the preceding paragraphs of this subsection.

SEC. 1376. ACTIONS TO BE TAKEN IF NO AGREEMENT OBTAINED.

(a) IN GENERAL. —

(1) If the President is unable, before the close of the negotiating period, to enter into an agreement under subtitle A with any priority foreign country identified under section 1374 which achieves the general negotiating objectives described in section 1375(b) as defined by the specific objectives established by the President for that country, the President shall take whatever actions authorized under subsection (b) that are appropriate and most likely to achieve such general negotiating objectives.

(2) In taking actions under paragraph (1), the President shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the President determines that actions against other economic sectors would be more effective in achieving the general negotiating objectives referred to in paragraph (1).

(b) ACTIONS AUTHORIZED. —

(1) The President is authorized to take any of the following actions under subsection (a) with respect to any priority foreign country:

(A) termination, withdrawal, or suspension of any portion of any trade agreement entered into with such country under—

(i) the Trade Act of 1974,

(ii) section 201 of the Trade Expansion Act of 1962, or

(iii) section 350 of the Tariff Act of 1930,

with respect to any duty or import restriction imposed by the United States on any telecommunications product;

(B) actions described in section 301 of the Trade Act of 1974;

(C) prohibition of purchases by the Federal Government of telecommunications products of such country;

(D) increases in domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) for purchases by the Federal Government of telecommunications products of such country;

(E) suspension of any waiver of domestic preferences under title III of the Act of March 3, 1933 (41 U.S.C. 10a, et seq.) which may have been extended to such country pursuant to the Trade Agreements Act of 1979 with respect to telecommunications products or any other products;

(F) issuance of orders to appropriate officers and employees of the Federal Government to deny Federal funds or Federal credits for purchases of the telecommunications products of such

country; and

(G) suspension, in whole or in part, of benefits accorded articles of such country under title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.).

(2) Notwithstanding section 125 of the Trade Act of 1974 and any other provision of law, if any portion of a trade agreement described in paragraph (1)(A) is terminated, withdrawn, or suspended under paragraph (1) with respect to any duty imposed by the United States on the products of a foreign country, the rate of such duty that shall apply to such products entered, or withdrawn from warehouse for consumption, after the date on which such termination, withdrawal, or suspension takes effect shall be a rate determined by the President.

(C) NEGOTIATING PERIOD.—

(1) For purposes of this section, the term “negotiating period” means—

(A) with respect to a priority foreign country identified in the investigation conducted under section 1374(a), the 18-month period beginning on the date of the enactment of this Act, and

(B) with respect to any foreign country identified as a priority foreign country after the conclusion of such investigation, the 1-year period beginning on the date on which such identification is made.

(2)(A) The negotiating period with respect to a priority foreign country may be extended for not more than two 1-year periods.

(B) By no later than the date that is 15 days after the date on which the President extends the negotiating period with respect to any priority foreign country, the President shall submit to appropriate committees of the Congress a report on the status of negotiations with such country that includes—

(i) a finding by the President that substantial progress is being made in negotiations with such country, and

(ii) a statement detailing the reasons why an extension of such negotiating period is necessary.

(d) MODIFICATION AND TERMINATION AUTHORITY.—

The President may modify or terminate any action taken under subsection (a) if, after taking into consideration the factors described in section 1374(b), the President determines that changed circumstances warrant such modification or termination.

(e) REPORT.—The President shall promptly inform the appropriate committees of the Congress of any action taken under subsection (a) or of the modification or termination of any such action under subsection (d).

(19 U.S.C. 3105)

SEC. 1377. REVIEW OF TRADE AGREEMENT IMPLEMENTATION BY TRADE REPRESENTATIVE.

(a) IN GENERAL.—

(1) In conducting the annual analysis under section 181(a) of the Trade Act of 1974 (19 U.S.C. 2241), the Trade Representative shall review the operation and effectiveness of—

(A) each trade agreement negotiated by reason of this part that is in force with respect to the United States; and

(B) every other trade agreement regarding telecommunications products or services that is in force with respect to the United States.

(2) In each review conducted under paragraph (1), the Trade Representative shall determine whether any act, policy, or practice of the foreign country that has entered into the agreement described in paragraph (1)—

(A) is not in compliance with the terms of such agreement, or

(B) otherwise denies, within the context of the terms of such agreement, to telecommunications products and services of United States firms mutually advantageous market opportunities in that foreign country.

(b) REVIEW FACTORS. —

(1) In conducting reviews under subsection (a), the Trade Representative shall consider any evidence of actual patterns of trade (including United States exports to a foreign country of telecommunications products and services, including sales and services related to those products) that do not reflect patterns of trade which would reasonably be anticipated to flow from the concessions or commitments of such country based on the international competitive position and export potential of such products and services.

(2) The Trade Representative shall consult with the United States International Trade Commission with regard to the actual patterns of trade described in paragraph (1).

(C) ACTION IN RESPONSE TO AFFIRMATIVE DETERMINATION. —

(1) Any affirmative determination made by the Trade Representative under subsection(a)(2) with respect to any act, policy, or practice of a foreign country shall, for purposes of chapter 1 of title III of the Trade Act of 1974, be treated as an affirmative determination under section 304(a)(1)(A) of such Act that such act, policy, or practice violates a trade agreement.

(2) In taking actions under section 301 by reason of paragraph (1), the Trade Representative shall first take those actions which most directly affect trade in telecommunications products and services with the priority foreign country referred to in paragraph (1), unless the Trade Representative determines that actions against other economic sectors would be more effective in achieving compliance by the foreign country with the trade agreement that is the subject of the affirmative determination made under subsection (a)(2).

(19 U.S.C. 3107)



SEC. 1378. COMPENSATION AUTHORITY.

If—

(1) the President has taken action under section 1376(a) with respect to any foreign country, and

(2) such action is found to be inconsistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade, the President may enter into trade agreements with such foreign country for the purpose of granting new concessions as compensation for such action in order to maintain the general level of reciprocal and mutually advantageous concessions.

(19 U.S.C. 3107)

SEC. 1379. CONSULTATIONS.

(a) ADVICE FROM DEPARTMENTS AND AGENCIES.—Prior to taking any action under this part, the President shall seek information and advice from the interagency trade organization established under section 242(a) of the Trade Expansion Act of 1962

(b) ADVICE FROM THE PRIVATE SECTOR.—Before—

(1) the Trade Representative concludes the investigation conducted under section 1374(a) or takes action under section 1374(c),

(2) the President establishes specific negotiating objectives under section 1375(b) with respect to any foreign country, or

(3) the President takes action under section 1376,

the Trade Representative shall provide an opportunity for the presentation of views by any interested party with respect to such investigation, objectives, or action, including appropriate committees established pursuant to section 135 of the Trade Act of 1974 (19 U.S.C. 2155).

(C) CONSULTATIONS WITH CONGRESS AND OFFICIAL ADVISORS.—For purposes of conducting negotiations under section 1375(a), the Trade Representative shall keep appropriate committees of the Congress, as well as appropriate committees established pursuant to section 135 of the Trade Act of 1974, currently informed with respect to—

(1) the negotiating priorities and objectives for each priority foreign country;

(2) the assessment of negotiating prospects, both bilateral and multilateral; and

(3) any United States concessions which might be included in negotiations to achieve the objectives described in subsections (c) and (d) of section 1375.

(d) MODIFICATION OF SPECIFIC NEGOTIATING OBJECTIVES.—Before the President takes any action under section 1375(b)(2)(A) to refine or modify specific negotiating objectives, the President shall consult with the Congress and with members of the industry, and representatives of labor, affected by the proposed refinement or

modification.

(19 U.S.C. 3108)

SEC. 1380. SUBMISSION OF DATA; ACTION TO ENSURE COMPLIANCE.

(a) SUBMISSION OF DATA.—The Federal Communications Commission (hereafter in this section referred to as the “Commission”) shall periodically submit to appropriate committees of the House of Representatives and of the Senate any data collected and otherwise made public under Report No. DC-1105, “Information Reporting Requirements Established for Common Carriers”, adopted February 25, 1988, relating to FCC Docket No. 86-494, adopted December 23, 1987.

(b) ACTION TO ENSURE COMPLIANCE.—

(1)(A) Any product of a foreign country that is subject to registration or approval by the Commission may be entered only if—

(i) such product conforms with all applicable rules and regulations of the Commission, and

(ii) the information which is required on Federal Communications Commission Form 740 on the date of enactment of this Act is provided to the appropriate customs officer at the time of such entry in such form and manner as the Secretary of the Treasury may prescribe.

(B) For purposes of this paragraph, the term “entered” means entered, or withdrawn from warehouse for consumption, in the customs territory of the United States.

(2) The Commission, the Secretary of Commerce, and the Trade Representative shall provide such assistance in the enforcement of paragraph (1) as the Secretary of the Treasury may request.

(3) The Secretary of the Treasury shall compile the information collected under paragraph (1)(A)(ii) into a summary and shall annually submit such summary to the Congress until the authority to negotiate trade agreements under part 1 of subtitle A expires. Such information shall also be made available to the public.

(19 U.S.C. 3109)

SEC. 1381. STUDY ON TELECOMMUNICATIONS COMPETITIVENESS IN THE UNITED STATES.

(a) IN GENERAL.—The Secretary of Commerce, in consultation with the Federal Communications Commission and the United States Trade Representative, shall conduct a study of the competitiveness of the United States telecommunications industry and the effects of foreign telecommunications policies and practices on such industry in order to assist the Congress and the President in determining what actions might be necessary to preserve the competitiveness of the United States telecommunications industry.

(b) PUBLIC COMMENT.—The Secretary of Commerce may, as appropriate, provide notice and reasonable opportunity for public comment as part of the study conducted under subsection (a).

(c) REPORT.—The Secretary of Commerce shall, by no later than the date that is 1 year after the date of enactment of this Act, submit to the Congress and the President a report on the findings and recommendations reached by the Secretary of Commerce as a result of the study conducted under subsection (a). Such report shall be referred to the appropriate committees of the House of Representatives and of the Senate.

(19 U.S.C. 3110)

#### SEC. 1382. INTERNATIONAL OBLIGATIONS.

Nothing in this part may be construed to require actions inconsistent with the international obligations of the United States, including the General Agreement on Tariffs and Trade.

(19 U.S.C. 3111)