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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
162423	PAPER	ADMINISTRATIONS'S POSITION ON THE DANFORTH TELECOMMUNICATIONS BILL	5	ND	B1
162424	PAPER	ADMINISTRATION'S POSITION ON THE DANFORTH TELECOMMUNICATIONS BILL	7	ND	B1

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EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20500

April 25, 1985

TO: Beryl Sprinkel
FROM: Joe Stone
SUBJECT: Danforth Telecommunications Bill

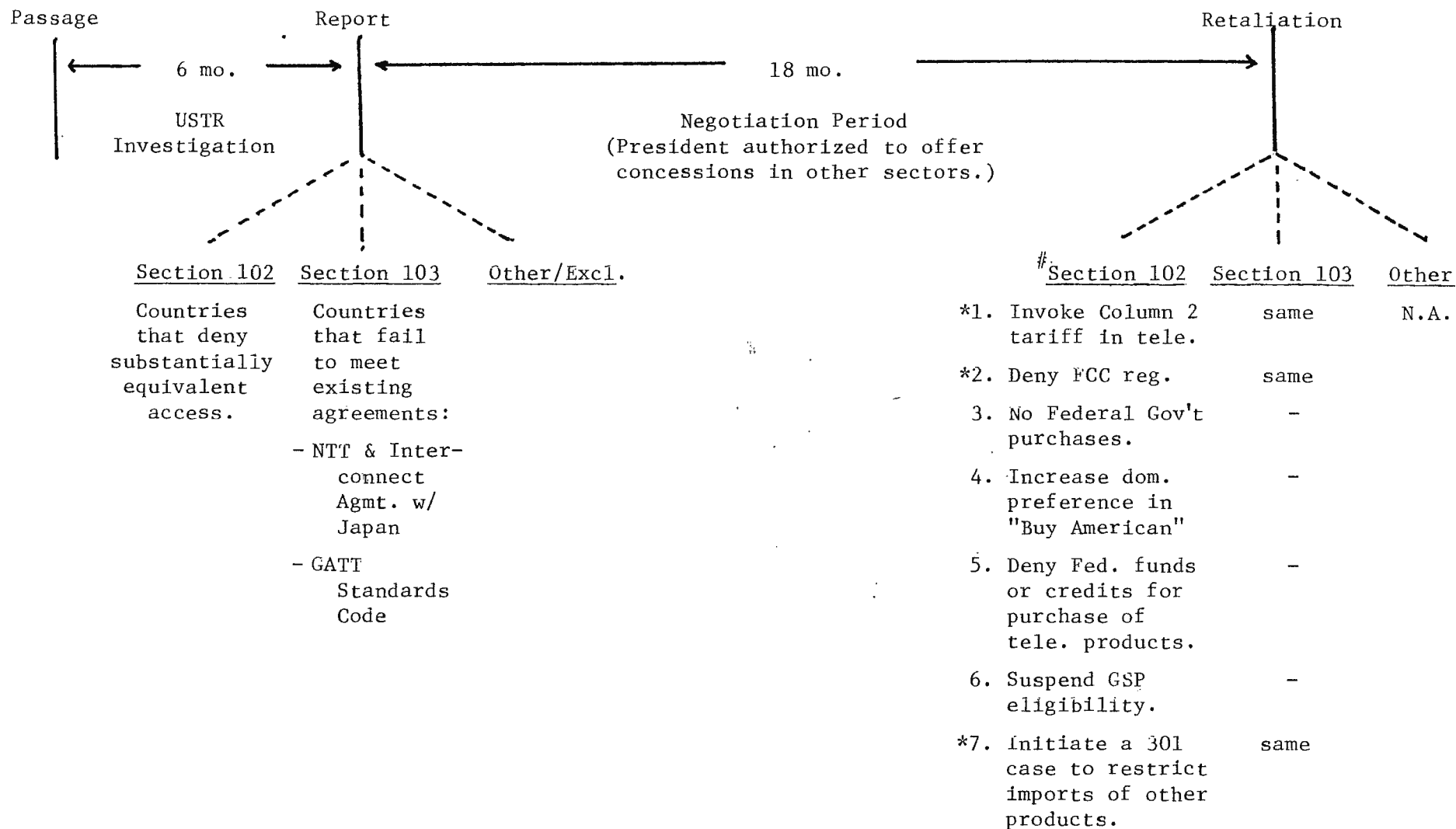
The new telecommunications bill introduced by Senator Danforth is an improvement over the last bill, but still falls short of meeting original Administration objections. A diagrammatic sketch of the bill is attached, along with a more detailed summary prepared by USTR. Another attachment (a letter from Ambassador Brock to the TPC) summarizes the Administration objections to the original bill.

Some of the major problems I have with the current bill are summarized below.

- o This is the wrong time for this bill. We should not embark on a radically new sectoral initiative at a time when we are seeking to reach an international consensus on a starting date for a new multilateral round of trade negotiations.
- o This issue really belongs in the GATT Government Procurement Code. The Procurement Code does not currently cover telecommunications equipment, and our efforts to liberalize telecommunications properly begins with expanding this Code, perhaps as part of the new round.
- o The bill still restricts Presidential discretion. Certain retaliatory measures are required if a new agreement is not reached with an "offending" country.
- o Sectoral reciprocity and strictly non-MFN approaches have been rejected by the Administration. The bill still contains strong elements of sectoral reciprocity and breaks with the MFN principle (even conditional MFN).

At a later date it may be possible for the Administration to work for a bill we could support, but for now I recommend that we oppose the bill in testimony before the Senate. Of course, we should express our sympathy with Senator Danforth's objectives and initiative and, perhaps, even congratulate him on key improvements in the bill.

Sketch of Danforth Telecommunications Bill



Notes: # The bill authorizes the President to grant new concessions to Section 102 Countries as compensation for taking any of the seven retaliatory measures using "fast track" procedure.
 * One of these retaliatory measures is required to be invoked if no agreement is reached.

Administration's Position on the
Danforth Telecommunications Bill

PROBLEM

The Administration must testify on the revised Danforth telecommunications trade bill on May 3. To prepare for this hearing, we must decide our position on the bill. The bill is supported in principal by a broad coalition of companies and trade associations from the high technology sector. Some companies are, however, concerned about the mandatory retaliation provisions of the bill.

DISCUSSION

Last year, the TPRG agreed that the United States faces a growing trade imbalance in telecommunications because we unilaterally opened our market to foreign competition through deregulation and divestiture while most foreign markets remain closed. But, the TPRG was reluctant to support the Danforth bill for the following reasons:

- (1) The legislation demanded sector specific reciprocity, whether or not foreign barriers were "legal."
- (2) The unbinding of telecommunications duties and the possibility of subsequently raising telecom tariffs

to 35 percent ad valorem would likely have resulted in substantial claims for compensation from our trading partners.

- (3) The administration of the bill's authority would have resulted in a violation of the MFN principle.
- (4) The President's discretion would have been severely restricted by the ability of Congress to disapprove negotiated agreements and to automatically implement a 35 percent tariff on a non-MFN basis.

The new version of the Danforth bill gives the President greater flexibility in responding to market access barriers. While still mandating retaliation if barriers remain, the bill gives the Administration authority to use a range of retaliatory measures as leverage to open foreign markets rather than relying solely on the threat of increasing tariffs to 35 percent, as was the case with last year's bill.

But, the revised bill does **not** give the President total discretion. The USTR is **required** to determine within six months of the bill's enactment which countries deny U.S. firms "substantially equivalent competitive opportunities" (SECO) and negotiations must be undertaken with such countries to open their markets. If an agreement is not concluded and approved by Congress within two

years from the date of enactment, retaliatory action must be taken. Hence, once a country is identified as denying SECO, retaliation is required unless an agreement is negotiated.

The critical issue we face in deciding our position on the revised bill is:

Can we agree to mandatory retaliation against foreign countries if they refuse to open their markets to U.S. telecom equipment producers and service providers?

SUMMARY ANALYSIS OF THE BILL

The bill **requires** USTR, in cooperation with TPC-agencies, to immediately initiate a six-month investigation to identify all countries that engage in acts, policies, or practices which:

- (1) deny U.S. telecom equipment producers, service providers, and their subsidiaries SECO in their market as compared to that available in the U.S. market, and/or
- (2) unjustifiably burden or restrict U.S. commerce or are in violation of, inconsistent with, or otherwise nullify or impair existing commitments or agreements related to telecom trade.

In its analysis of whether a foreign country grants SECO, USTR et al are to take account of the benefits to foreign countries of open access to the U.S. market due to deregulation and divestiture. We are also required to consider actual patterns of trade in relation to the competitive position and export potential of U.S. firms. In making determinations whether trade agreement rights or benefits are infringed, sales less than what would be reasonably anticipated are "dispositive" evidence.

The six-month investigation will put all our telecom trading partners into either one or two of three categories. A description of each of the categories follows. Each category is identified by the relevant section of the legislation.

I. Section 102 Countries

After completion of the six-month investigation, the President is **required** to initiate negotiations with all countries which USTR et al identify as having acts, policies and practices that deny U.S. firms and subsidiaries opportunities substantially equivalent to those in the United States. The objective of these negotiations is to obtain multilateral or bilateral agreements that provide U.S. firms opportunities substantially equivalent to those available to foreign firms in the U.S. telecom market and to facilitate increased exports of telecom products and services commensurate with the competitiveness of the U.S. telecom in-

dustry. The bill also authorizes the President to make tariff and non-tariff concessions outside of the telecom sector as part of any agreement negotiated to achieve the aforementioned objectives. These agreements could be non-MFN. And, they would be subject to fast-track approval by Congress under section 102 of the Trade Act of 1974.

However, if negotiations with any of these countries are not successfully concluded within 18 months after the conclusion of the six-month investigation (i.e., two years after enactment), the President is **required** to take any of the following actions to restore the balance of competitive opportunities:

- (1) increase tariffs on telecom imports from the offending country to the column 2 rate (i.e., 35 percent ad valorem), and withdraw other U.S. concessions under existing trade agreements;
- (2) deny FCC registration for customer premise equipment produced in the offending country;
- (3) prohibit Federal Government purchases of telecom equipment from the offending country;

- (4) increase domestic preferences under Buy America provisions with respect to purchases from the offending country;
- (5) deny Federal funds or credits for the purchase of telecom products by the offending country;
- (6) suspend GSP benefits on any products imported from the offending country; and
- (7) use section 301 authority to limit or deny the importation of other products and services from the offending country.

Of the seven actions, the President is **required** to "...first take those actions which most directly affect trade in telecommunications products and services of the country concerned."

The bill also **requires** USTR to annually review the policies and practices of all Section 102 Countries to determine if they have violated their telecom trade agreement. If so, USTR is **required** to take actions (1), (2), or (7) as described above to fully offset the offending practice and restore a balance in competitive opportunities. Finally, the bill authorizes the President to grant new concessions to Section 102 Countries as compensation

for taking any of the seven retaliatory measures described above, subject to Congressional approval under the "fast track" procedure.

II. Section 103 Countries

This category includes those countries found in the six-month investigation to engage in acts, policies, or practices that unjustifiably burden or restrict U.S. commerce, or violate, are inconsistent with, or otherwise nullify or impair existing agreements affecting trade in telecom products and services. Within 30 days of the conclusion of the six-month investigation (i.e., 7 months from the date of enactment), the USTR is **required** to:

- (1) increase tariffs on telecom imports from the offending country to the column 2 rate (i.e., 35 percent ad valorem), and withdraw other U.S. concessions under existing trade agreements;
- (2) deny FCC registration for customer premise equipment produced in the offending country; or
- (3) use section 301 authority to limit or deny the importation of other products and services from the offending country.

In addition, the bill specifically precludes the President from compensating Section 103 Countries if he takes retaliatory action against them.

Comment: Practically speaking, the NTT and Interconnect Agreements with Japan and the GATT Standards Code are the only agreements which relate to section 103 action. The Standards Code is applicable only for products for sale directly to end-users and does not apply to products for sale to public entities, e.g., PTT's. This market can be significant, however. In Japan, for example, the entire non-NTT market (over 60% of Japan's \$6 billion market) falls into this category. The Government Procurement Code is not applicable because the Code does not yet include telecommunications entities.

Section 103 is a significant change from Danforth's 1984 bill in that it **requires** the USTR to take retaliatory action against countries that nullify or impair their commitments under existing trade agreements affecting telecom trade. While that language appears to allow the President some flexibility, the bill states that U.S. exports under a trade agreement below a level that could be reasonably anticipated in light of the U.S. industry's international competitive position are considered "dispositive" evidence. This forces USTR to take action against Japan without using the GATT dispute-settlement procedures. Failure to identify Japan as a Section 103 Country would thus effectively require the

President to find that any sales to Japan were all we could reasonably expect given our competitive position. Identifying Japan as a Section 103 Country, on the other hand, would require strong retaliation within seven months of enactment.

III. Countries to be Excluded

If the USTR determines that the potential market in a particular country is not substantial, he may exclude it from the six-month investigation. This authority can only be used after consultations with Congress and after receiving public comment.

Our Position Last January

cc: J. Stove

TRADE POLICY COMMITTEE
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON D C 20506

January 23, 1985

MEMORANDUM TO MEMBERS OF THE TRADE POLICY COMMITTEE

FROM: Ambassador William E. Brock

SUBJECT: Administration Position on the Danforth
Telecommunications Bill

Senator Danforth plans to reintroduce his telecommunications trade bill and hold a hearing on it in February. In July and September of last year, the Administration was asked to testify on the bill, but the agencies were unable to agree on a final position. As a result, I asked Senator Danforth if we could delay testifying on his bill. He agreed with the understanding that we would have a position when the bill is reintroduced in the next Congress.

Mike Smith has been working informally with representatives from State, Treasury, Commerce, CEA, NSC, and OMB to develop an interagency position on the Danforth bill. These agencies have agreed that:

- (1) We cannot support the bill as it was introduced in the last Congress.
- (2) The Administration can support an alternative to the bill which, in the context of market access negotiations in telecommunications, grants the President broad negotiating authority to cut tariffs on telecommunications equipment and to raise tariffs on other products at his discretion.
- (3) The President should use his existing authority to negotiate market access agreements and, if necessary, self-initiate 301 cases.
- (4) A letter should be sent to Senator Danforth reflecting the position outlined above.

Several draft letters from the President to Senator Danforth were considered by the group. The attached letter for your comment has been informally approved by the CEA, State, Treasury, NSC and Commerce representatives in Mike Smith's working group. OMB has approved the substance of the letter, but believes that it should be sent from me to the Senator.

I would like to send a letter forward to the White House for a decision before the Under Secretaries depart for Japan on Saturday. If the letter is signed by the President, it will substantially strengthen our negotiating position for the telecommunications discussions that are scheduled to begin next week. Accordingly, I would appreciate your telephone clearance on the letter by noon Thursday, January 24. Please telephone your comments to Tim Regan on 395-7271.

Attachment

PROPOSED LETTER FROM THE PRESIDENT TO SENATOR DANFORTH

January 22, 1985

Dear Jack:

I want to commend you for the work you've done on telecommunications. Because of your efforts, national awareness of the trade problems in this sector has been heightened.

As you know, I've placed high priority on getting increased access to the Japanese telecommunications market. At the end of this month, the Under Secretaries from several government agencies will be traveling to Japan to begin the negotiating process in this and other important sectors. I also intend to initiate market access negotiations with other countries in the very near future. Where appropriate, I will use my authority under the unfair trade statutes to ensure that these negotiations succeed.

In the meantime, I understand that you are considering proceeding with your telecommunications trade bill. There are elements in that bill, as it was introduced last session, that the Administration cannot support. Perhaps a more flexible approach can be taken giving us broader negotiating authority than we have under current law.

I've asked Bill Brock to work with you on this issue. I hope we can work together to find some mutually acceptable approach for dealing with this problem.

Thanks for your help and support.

Sincerely,

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS

Date: 5/10/85

To: ~~Nancy Frieser~~ Roy
From: Joe Stone Roy

I have revised an attachment to an earlier memo - please replace it file on Danforth telecom. bill. Only the attachment is changed.

EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL OF ECONOMIC ADVISERS
WASHINGTON, D.C. 20500

April 25, 1985

TO: Beryl Sprinkel
FROM: Joe Stone
SUBJECT: Danforth Telecommunications Bill

The new telecommunications bill introduced by Senator Danforth is an improvement over the last bill, but still falls short of meeting original Administration objections. A diagrammatic sketch of the bill is attached, along with a more detailed summary prepared by USTR. Another attachment (a letter from Ambassador Brock to the TPC) summarizes the Administration objections to the original bill.

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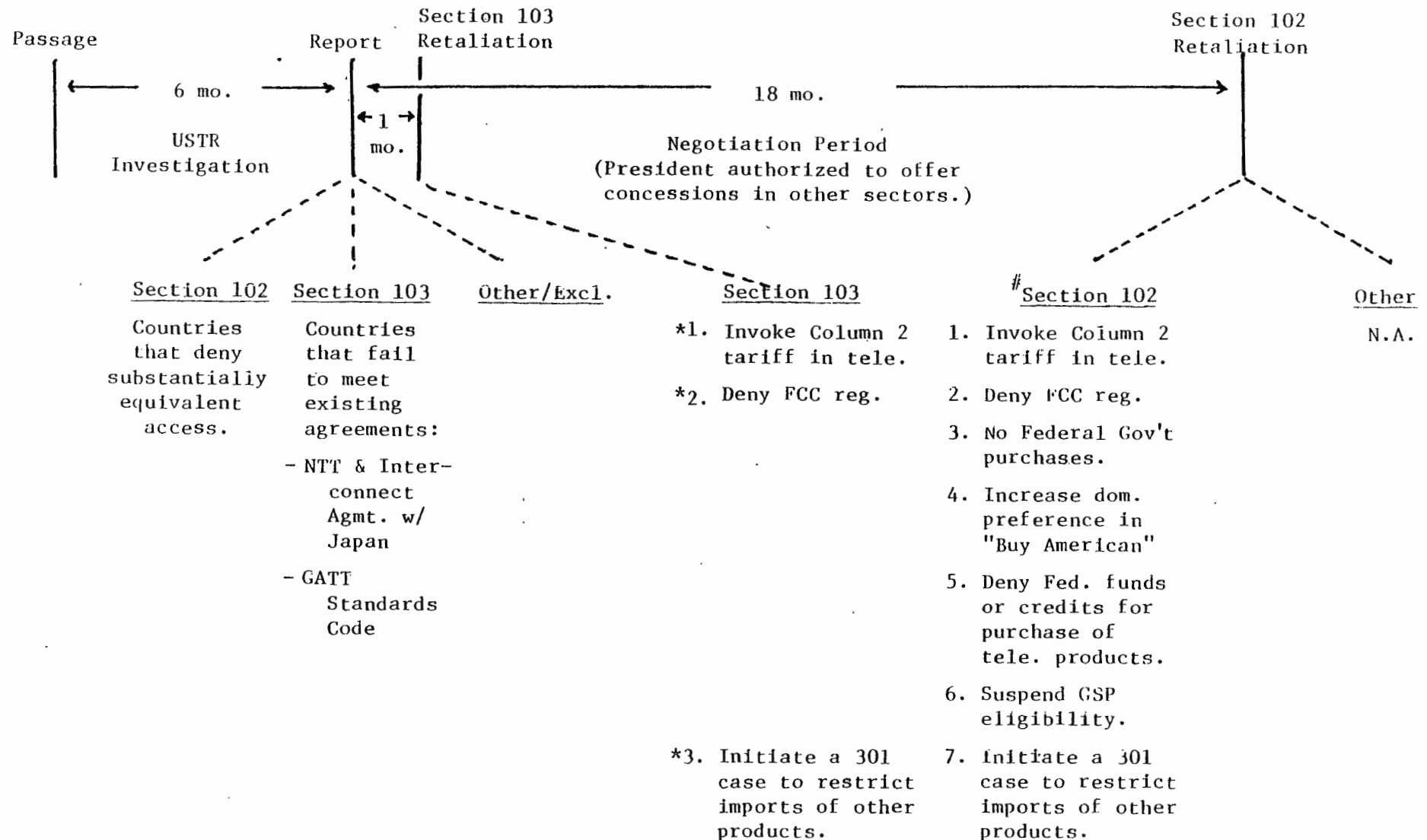
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Attachment

cc: TM, MM, AW

revised

Sketch of Danforth Telecommunications Bill



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* One of these retaliatory measures is required

Copy to J Stone
m 5/9

Joe Stone
attending meeting

OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE
EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

UNCLASSIFIED WITH
~~CONFIDENTIAL ATTACHMENT~~

May 8, 1985

MEMORANDUM

TO: Members of the Trade Policy Review Group (TPRG)

FROM: Ambassador Michael B. Smith

SUBJECT: TPRG Meeting, Thursday, May 9

The TPRG will meet on Thursday, May 9 at 1:30 p.m. in Room 203 in the Winder Building. The only agenda item is the telecommunications bill (paper attached).

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162423	PAPER ADMINISTRATIONS'S POSITION ON THE DANFORTH TELECOMMUNICATIONS BILL	5	ND	B1

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5/17 CC: Joe Stone
T. Moore
→ B. Sprinkel

Trade

THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON
20506

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4/5/85

May 17, 1985

UNCLASSIFIED WITH
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MEMORANDUM

To: Members of the Trade Policy Review Group
From: Michael B. Smith, Acting
Subject: Danforth Telecommunications Bill

Attached for your comment is the most recent version of the issue paper on the Danforth Telecommunications bill that will be considered by the EPC. We have made every effort to capture the essence of each agency's position in this paper.

We need your clearance and/or comments by noon Monday in order to submit a final document to the EPC Secretariat on Tuesday. Since this paper has gone through several iterations in an attempt to reflect accurately each agency's views, we would appreciate receiving your comments in the form of written, proposed changes to the text of the paper.

Please send your written comments to Tim Regan in Room 407 of the Winder Building, or call him with your clearance on 395-7271.

Note: Joe Stone will handle.

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162424	PAPER ADMINISTRATION'S POSITION ON THE DANFORTH TELECOMMUNICATIONS BILL	7	ND	B1

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