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Congress and the Question of Most Favored Nation Status for the People's Republic of China

Eugene A. Theroux*

Background

The Congress of the United States merits special attention in any historical or prospective assessment of United States trade with China. The American embargo on trade with China, only recently relaxed, was based on Acts of Congress,¹ and removal of a principal remaining impediment to normal trade

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1. Trading with the Enemy Act of 1917, 12 U.S.C. § 95(a) (1970). The Act empowers the President "during the time of war or during any other period of national emergency declared by the President" to regulate or prohibit commercial or financial transactions "by any person, or with respect to any property, subject to the jurisdiction of the United States" with regard to "any foreign country or national thereof." Under this act, President Truman on December 17, 1950, prohibited all commercial and financial transactions with Communist China.

Export-Import Bank Act of 1945, *as amended*, 12 U.S.C. § 635(b)(2)(A) (1970). The Act states that the Bank shall not guarantee, insure, or extend credit, or participate in any extension of credit in connection with the purchase or lease of any product by "a Communist country" as defined in the Foreign Assistance Act of 1961, or in connection with the purchase or lease of any product by any other foreign country if the product in question is principally for use in, or sale or lease to "a Communist country." Exceptions to this ban may be made if the President determines them to be in the national interest; he must report that determination within 30 days to both Houses of Congress.

Export Control Act of 1949, 50 U.S.C. App. §§ 2401 *et seq.* (1970). The Act declares that it is the policy of the United States to apply export controls to "Communist-dominated nations" to the "maximum extent possible" in cooperation with U.S. allies and non-Communist nations. (Superseded by the Export Administration Act of 1969.)

Mutual Defense Assistance Control Act of 1951 (Battle Act), 22 U.S.C. §§ 1611-13(d) (1970). Congress ". . . declares it to be the policy of the United States to apply an embargo on the shipment of arms, ammunition, implements of war, atomic energy materials, petroleum, transportation materials of strategic value and items of

relations—lack of most-favored-nation treatment for China's exports to the United States requires Congressional action. Moreover, there resides in the Congress substantial power to affect the future of Sino-American commercial relations by additional legislation or through the use of nonstatutory pressures by the Executive Branch.

After the first American vessel, *The Empress of China*, anchored at Canton in 1784, the ship reported to the Continental Congress of Chinese enthusiasm at the prospect of trade, concluding that “[t]o every lover of his country, as well as those more immediately concerned in commerce, it must be

primary strategic significance used in the production of arms, ammunition, and implements of war to any nation or combination of nations threatening the security of the United States, including the Union of Soviet Socialist Republics and all countries under the domination. . . .” The Act empowers the Executive to determine items to be embargoed and that such determination “shall be continuously adjusted to current conditions . . .”

It further states that upon the recommendation of the Administrator, all military economic, or financial assistance to any nation be terminated if that nation knowingly permits the shipment “to any nation or combination of nations threatening the security of the United States” of arms, ammunition, implements of war, atomic energy materials, petroleum, transportation materials of strategic value and “items of primary strategic significance used in the production of arms, ammunition, and implements of war.” The President, however, may disregard the recommendation of the Administrator if he determines that a termination of such assistance would be detrimental to the security of the United States.

The Act further declares it to be the policy of the United States to regulate the export of commodities other than those specified by the Act with regard to nations or combination of nations threatening the security of the United States.

The President is directed to invite nonrecipients of American aid to cooperate in controlling the exportation of strategic commodities to any nation or combination of nations threatening the security of the United States.

Trade Agreements Extension Act of 1951, 19 U.S.C. § 1351 (1970). The Act denies most-favored-nation status to all Communist countries except Yugoslavia and specifically prohibits the importation into the United States of certain furs and skins from Communist China. (Superseded by the Trade Expansion Act of 1962, 19 U.S.C. § 1801 (1970). See note 31 *infra*.)

Mutual Security Act of 1954, 22 U.S.C. § 1934(a) (1970). Congress authorizes the President to control the export and import of arms, ammunition, and implement of war, including technical data relating thereto. The President is authorized to designate those articles which shall be considered as arms, ammunition, and implements of war, including technical data relating thereto. (Section 414.)

Trade Expansion Act of 1962, 19 U.S.C. § 1861 (1970). The Act directs the President to “suspend, withdraw, or prevent the application” of the most-favored-nation tariff treatment to products, imported directly or indirectly, of any country or area “dominated or controlled by Communism.” The President may extend the benefits of trade agreement concessions to products, imported directly or indirectly, of a Communist country, which was receiving trade concessions at the time of enactment of the Act, upon determination that such treatment would be in the national interest and would promote the independence of such country or area “from domination or control by international communism.”

Export Administration Act of 1969, 50 U.S.C. App. § 2401(2) (Supp. III 1973). The Act declares that it is the policy of the United States to restrict the export of goods and technology which would make a significant contribution to the military potential of any other nation or nations which would prove detrimental to the national security of the United States.

a pleasing reflection that a communication is thus happily opened between us and the eastern extreme of the globe."² The second law enacted by the first United States Congress, the Tariff Act of 1789, sought *inter alia* to protect American commerce with China by imposing a discriminatory duty on tea and other goods imported in non-U.S. vessels, and American merchants petitioned Congress for aid in expansion and protection of that trade.³

The first American treaty with China was negotiated for the United States by Caleb Cushing, a former Member of Congress from Massachusetts. Dispatched by President Tyler with elaborate instructions from Secretary of State Daniel Webster, Cushing concluded the treaty at Wanghia, a suburb of Macao, on July 3, 1844. Among the instructions he followed successfully was an injunction to secure most-favored-nation treatment for the United States.⁴

China's early experience with the "preferred" or "most-favored-nation" principle was bitter. The clause in the Treaty of 1844 gave the United States equal access to the same "treaty ports" and other concessions the British had won in the Treaty of Nanking two years earlier.⁵ By its terms, the clause also guaranteed to the United States automatically the same rights or privileges China might thereafter extend to any nation. The provision was unilateral. Benefits extended by China to the United States were not only not reciprocated by the United States, but American "exclusion laws" of a later period were, in a sense, to accord "least favored" status on the Chinese.

As Great Britain, France, Germany, Russia, Portugal and Japan forcibly wrested concessions from a hapless and weakened China, all benefited from a similar provision. China's ability to resist extending further privileges declined rapidly as one nation after another wrung from her benefits thus secured by all others. The most-favored-nation concessions granted by China in 1842, almost as much as the military superiority of her adversaries, sapped her power and will to resist the foreign predators.

Victimized by unequal treaties, bewildered by mercantilism, behind in

2. Diplomatic Correspondence of the U.S., 1783-1789, 767, quoted by J.W. FOSTER in AMERICAN DIPLOMACY IN THE ORIENT, 27-28 (1903).

3. *Id.* at 38; HISTORY OF THE COMMITTEE ON FINANCE, S. DOC. NO. 91-57, 91st Cong., 2d Sess. (1970).

4. S. Doc. No. 138, 28th Cong., 2d Sess. 5 (1843).

5. Treaty Between the United States of America and China, July 3, 1844, art. II, 8 Stat. 592 (1848), T.S. No. 45.

Citizens of the United States resorting to China for the purpose of Commerce . . . shall, in no case, be subject to higher duties than are or shall be required of the people of any nation whatever. . . . And if additional advantages or privileges, of whatever description, be conceded hereafter by China to any other nation, the United States, and the citizens thereof, shall be entitled thereupon, to a complete, and equal, and impartial participation in the same. 8 Stat. 592; T.S. 45.

military tactics and naval armaments, infected by opium, corrupted with bribes and demoralized over foreign encroachment in her cities and over her commerce, China in the 19th century virtually surrendered her sovereignty to her "most-favored-nations."⁶

Bilateral most-favored-nation status eventually did become a part of U.S.-China trade relations. It was made a part of the Treaty of Friendship, Commerce and Navigation concluded between the United States and the Republic of China in 1946, though the ink on that treaty was barely dry before the Nationalist government was overthrown and driven from the mainland by Communist forces. Should the United States accord recognition to the Government of the People's Republic of China, however, neither country would succeed to the benefits of the 1946 treaty.

In the period following Chiang Kai-shek's defeat, the United States sought to strangle China with a trade quarantine as comprehensive as may be found in the annals of international commercial relations.⁷

Relaxation of the United States embargo on China trade was begun in July of 1969, when President Nixon eased restrictions on American travel to China and permitted limited import of Chinese goods.⁸ Thereafter, the United States permitted its flag vessels or aircraft to carry Chinese cargo between non-Chinese ports,⁹ placed the Peoples Republic of China in country group "Y" of the Commodity Control List maintained by the Office of Export Control of the Department of Commerce¹⁰ and allowed American aircraft and

6. "Whether in commercial and economic matters, or in purely political and administrative relations, the Powers have not hesitated to employ the most-favored-nation clause as a convenient tool in extracting special privileges from China. The most-favored-nation doctrine, whose ordinary purport is to insure against inequality and discrimination among nations, has thus degenerated into a mere pretext with which the principal Powers in China have and still do endeavor to establish their special provisions as against their rivals, utterly disregarding the interests of the territorial Power." T Sze, *China and the Most Favored Nation Clause, 1925* (unpublished doctoral dissertation, Columbia University, New York). Sze's study is an excellent chronicle of the political and economic penetration of Imperial China.

7. Recent studies of the U.S. trade embargo on China include Redick, *Recent Changes in United States Trade Regulations Affecting the People's Republic of China: A Market Decontrolled*, 13 VA. J. INT'L L. 78 (1972); Metzger, *Administrative Survey: 1971, (People's Republic of China)*, 4 LAW AND POL. IN INT'L BUS. 308, 404 (1972); Lee & McCobb, *United States Trade Embargo on China, 1949-1970: Legal Status and Future Prospects*, 4 N.Y.U.J. INT'L & POL. 1 (1971); Garson, *The American Trade Embargo Against China*, CHINA TRADE PROSPECTS AND UNITED STATES POLICY (Eckstein ed. 1970); Garson, *The American Trade Embargo of China: Recent Developments*, 2 J. MAR. L. & COM. 41 (1970).

8. Each tourist is permitted to import \$100 worth of Chinese goods as accompanying baggage for noncommercial purposes. 34 Fed. Reg. 12179 (1969). Visas for visitors from the Peoples Republic of China are to be expedited. 7 Weekly Pres. Docs. 628 (1971).

9. 7 Weekly Pres. Docs. 628 (1971).

10. 8 Weekly Pres. Docs. 438-39 (1972). Prior to the February 14, 1972 decision, the general license list for the PRC involved some 75-80 percent of the products

ships to call at Chinese ports.¹¹

The distance the two nations have come toward normalized trade relations, however, dramatizes a remaining major obstacle to American-Chinese trade—the lack of most-favored-nation treatment for Chinese exports to the United States.

U.S. Policy and the Most Favored Nation Clause

The most-favored-nation clause is intended to eliminate discriminatory treatment in the international exchange of goods. The clause obligates a country to extend it to its contracting party all concessions which are accorded the goods of any other state.¹² In this respect, the clause is an important tool in the fostering of international trade.

The most-favored-nation concept has always been a cornerstone of American trade policy.¹³ A wide variation in the form of the clause as used by the United States, however, reflects a flexible negotiating posture fashioned to serve varying economic and political interests.¹⁴ In 1923, the United States departed from its usual practice of granting only conditional most-favored-nation treatment.¹⁵ This change occurred after the United

approved for export to the Soviet Union. Locomotives, construction equipment, internal combustion engines, industrial chemicals and rolling mills are some of the products which have newly been made available for trade. See Starr, *Developing Trade with China*, 13 VA. J. INT'L. L. 13 (1972).

11. American firms are now permitted to fuel Chinese ships and aircraft not bound for North Vietnam, North Korea, or Cuba. See White House announcement, November 22, 1972, and Department of Commerce and Department of Transportation press releases of Nov. 22, 1972; relating to modification of Transportation Order T-2.

12. Of all the definitions of most-favored-nation treatment, the most comprehensive provides as follows: "A most-favored-nation clause is a provision, generally inserted in a commercial agreement between two states, which obligates the contracting parties to extend all concessions or favors made by each in the past, or which might be made in the future, to the articles, agents, or instruments of commerce of any other state in such a way that their mutual trade will never be on a less favorable basis than is enjoyed by that state whose commercial relations with each is on the most favorable basis." SNYDER, *THE MOST-FAVORED-NATION CLAUSE* 10 (1948). For an interesting study on the history of the most-favored-nation provision, and its GATT application, see *Executive Branch GATT Study No. 9, The Most-Favored-Nation Provision*, Sen. Comm. on Finance, 93d Cong., 1st Sess., Committee Print, July 1973.

13. In 1968, the United States had entered into Most-Favored-Nation agreements with 102 countries.

14. In his 1948 monograph, note 12 *supra*, Snyder, described the basic forms of the most-favored-nation clause in five categories: (1) conditional and unconditional, (2) unilateral or mutual, (3) limited or unlimited, (4) positive or negative, and (5) simple or complex. These terms may be explained by applying them to the first most-favored-nation provision negotiated by the United States with China. See note 5 *supra*. This provision was unconditional, since any concessions granted to another country on a like product were to be immediately applicable to the contracting party; the provision was unilateral since the United States was not bound to give most-favored-nation treatment to China. Not confined to a list of enumerated items, the provision was negative in phrasing and simple in plan.

15. An example of the conditional pledge will best explain its use. If countries A

States had experienced difficulty in negotiating agreements with the conditional clause and a consequent fear of discrimination against American goods in international commerce.¹⁶ With adoption of the unconditional form of the clause, the United States was better equipped to safeguard her trade.

In 1934, the Congress voted to give the equivalent of most-favored-nation treatment to all countries with respect to duties and other import restrictions on foreign goods.¹⁷ While the President was given authority to suspend the benefits in the event of discrimination against American commerce,¹⁸ the United States adopted the most-favored-nation measure unilaterally, as a gesture of good will and in the expectation that increased foreign commerce would benefit the domestic economy. In 1948, the United States joined the General Agreement on Tariffs and Trade (GATT), thereby obligating itself to grant to all Contracting Parties "any advantage, favor, privilege or immunity" which had been given to any one of the parties, a broader commitment than that contained in the 1934 Act.¹⁹

In addition to the multilateral commitment embodied in GATT, the United States initiated an ambitious program of bilateral agreements in the form of the treaty of Friendship, Commerce and Navigation. These treaties applied both the national treatment and most-favored-nation standards to a number of specific tariff and non-tariff trade problems. For the past two decades, the Friendship, Commerce Navigation treaty has been the basic instrument for establishing commercial relations with non-Communist countries.²⁰

and *B* enjoyed a particular tariff rate with the United States, and *A* negotiated a lower rate in exchange for a comparable reduction in its tariff on an American product, *B* would not obtain the lower tariff rate until *B* had given the United States a concession comparable to the one given by *A*.

The chief argument against the conditional form was that it was unfair that a country could be in a position to claim without compensation concessions which other countries have secured only by giving concessions in return. The United States used the conditional form beginning with a treaty with France in 1778. See Crandall, *The American Construction of the Most-Favored-Nation Clause*, 7 AM. J. INT'L L. 708 (1913).

16. HORNBECK, *THE MOST-FAVORED-NATION CLAUSE IN COMMERCIAL TREATIES* 12-4 (1900). J. VINER, *INTERNATIONAL ECONOMICS* 106 (1951). The first agreement to conclude the new form was an executive agreement concluded with Brazil in 1923. T.S. 672. This was followed in 1925 by a Friendship, Commerce and Navigation Treaty with Germany. 44 Stat. § 132, T.S. 725. The United States has consistently used the unconditional clause in numerous agreements since 1923. See, generally, Catudal, *The Most-Favored-Nation Clause and the Courts*, 35 AM. J. INT'L L. 41, 42 (1941).

17. Congress amended the Tariff Act of 1930, 48 Stat. 943 (1934), codified at 19 U.S.C. § 1351 (1970).

18. *Id.*

19. See Espiell, *The Most-Favored-Nation Clause; Its Present Significance in GATT*, 5 J. WORLD TRADE L. 29, 34 (1971).

20. For a useful collection of materials on the Friendship, Commerce & Navigation Treaty, see Metzger, 1 L. INT'L TRADE 126 (1966).

Trade Agreements Extension Act of 1951

With the advent of the Cold War, Congress employed most-favored-nation status as a political tool. Until 1951, the United States had continuously followed a trade policy since the Reciprocal Trade Agreements Act of 1934 under which the United States extended unconditional and unlimited most-favored-nation treatment to all foreign imports whether or not it had a trade agreement with the exporting country.²¹

On February 7, 1951, Representative John Byrnes of Wisconsin offered an amendment to the Trade Agreements Extension Act of 1951, H.R. 1612, providing *inter alia* that within 90 days "the President shall . . . withdraw or prevent the application of reduced tariffs or other concessions . . . to imports from any nation or area . . . dominated or controlled by the foreign government or foreign organization controlling the world Communist movement."²²

Byrnes advanced two principal grounds for his amendment: first, that the United States should not grant trade concessions to countries opposing the United States in Korea and, second, that Communist countries by their economic nature could not reciprocate such concessions. On the first point, Byrnes cited Soviet sale of furs to the U.S. in order to earn "dollars with which to purchase strategic items elsewhere" for use in Korea. On the second, he said that in 1949, 76 percent of China's exports to the United States had benefited from most-favored-nation duty rates even though the United States had no trade agreement with the Peoples Republic of China and enjoyed no benefits in return. Despite some political discussion, most House Members who expressed a view favored the Byrnes amendment on protectionist grounds, holding that goods of Communist countries were produced by slave-labor yielding low-priced items with which the U.S. could not compete.²³

In his explanation of H.R. 1612 to the Senate, Senator George pointed out that his Finance Committee had unanimously broadened the Byrnes amendment to make it retrospective as well as prospective.²⁴ The House and

21. For a discussion of the 1934 Act, see COMMITTEE ON FINANCE, S. REP. NO. 871, 73d Cong., 2d Sess. 18-19.

22. 97 Cong. Rec. 1065 (1951) (remarks of Mr. Byrnes).

23. One speaker, Representative Short of Missouri, said he would oppose the trade bill altogether because it was a transfer of Congressional authority to the Executive. American trade policy, he said, had for too long been "maneuvered, manipulated and concocted by long-haired men and short-haired women in the State Department." He said he recognized that other countries must sell to the United States if they are to buy from the United States, but that he far preferred to help "my next door neighbor in Missouri" rather than "the coolie in China, the peon in Mexico or the hottentot from Zanzibar to Zamboanga." 97 Cong. Rec. 1067 (1951) (Remark of Mr. Shorr).

24. 97 Cong. Rec. 5491 (1951) (remarks of Mr. George).

Sentate versions went to a Conference Committee, and the Conference Report was approved by the Senate on May 29, 1951, and by the House on June 5, 1951.²⁵

As finally enacted, Section 5 of the Trade Agreements Extension Act of 1951 provided in pertinent part:

As soon as practicable, the President shall take such action as is necessary to suspend, withdraw or prevent the application of any reduction in any rate of duty . . . or other concession . . . to imports from the Union of Soviet Socialist Republics and to imports from any nation or area dominated or controlled by the foreign government or foreign organization controlling the world Communist movement.²⁶

Section 11 of the Act, added by the Senate, provided that the President also take necessary measures to prevent the importation of certain Chinese-produced furs.²⁷

Other Senate amendments, to which the House agreed in Conference, provided that the President need act only when such action was "practicable." These amendments deleted the House requirement that the President act within 90 days and, in addition, gave the Chief Executive the authority to restore most-favored-nation status to "countries which appear to be throwing off the yoke of communism."²⁸

In June, 1951, Representative Cleveland Bailey of West Virginia called upon the President to use his authority under the 1951 Act to revoke trade concessions to China. Bailey called for formal notice to China that her exports to the United States would no longer be entitled to most-favored-nation tariff treatment. He cited a statement by the National Labor-Management Council on Foreign Trade Policy that while China in 1950 abrogated the 1947 Geneva multilateral trade agreement, the cancellation did not technically prevent her from enjoying, under the most-favored-nation clause, tariff reductions made by the United States with third countries.²⁹ President Truman issued a Proclamation on August 4th, 1951, carrying into effect the mandate of the Act with respect to imports from Communist nation and areas.³⁰

25. 97 Cong. Rec. 5951 (1951); H.R. REP. NO. 537, 82d Cong., 1st Sess. 5 (1951).

26. Trade Agreements Extension Act of 1951, § 1362, ch. 141, § 5, 65 Stat. 73 (1951), as amended 19 U.S.C. § 1362 (1970).

27. 19 U.S.C. § 1360 (1970).

28. S. REP. NO. 33, 82 Cong., 1st Sess. 5 (1951); H.R. REP. NO. 537, 82d Cong., 1st Sess. 5 (1951).

29. 97 Cong. Rec. A4188 (1951) (remarks of Hon. Bailey).

30. Proclamation No. 2935, Aug. 4, 1951, 16 FED. REG. 7635, 65 Stat. p. c. 25; 1951 U.S. Code Cong. and Admin. News Vol. 1, p.922.

Trade Expansion Act of 1962

Major trade legislation enacted in 1962 continued the policy of the 1951 Act, though section 5 of the 1951 Act was repealed and superceded. While section 251 of the Trade Expansion Act of 1962 generally provided most-favored-nation tariff treatment "to the products of all foreign countries," section 231 of that Act continued the political use of most-favored-nation status with respect to Communist countries directed the President "as soon as practicable" to:

suspend, withdraw or prevent the application of the reduction, elimination or continuance . . . of any existing duty-free or excise treatment . . . to products, whether imported directly or indirectly, of any country or area dominated or controlled by Communism.³¹

Under section 231 of the House bill, most-favored-nation treatment would have been denied to the products of all Communist countries including Poland and Yugoslavia, which had received most-favored-nation benefits in 1960.³² The Senate Finance Committee sought to permit the President, in his discretion, to continue most-favored-nation status for these countries by reinstating, in substance, the language of the Trade Agreements Extension Act of 1951. The terms of this act permitted the extension of most-favored-nation treatment to the products of countries appearing to be achieving a measure of independence of the world Communist movement. But even under the Senate proposal, reduction in duty rates was to be expressly denied for imports from China.³³ In Conference, however, the Senate receded from its position and the House version was retained in the final bill.³⁴ Any part of China "which may be under Communist domination or control" has been explicitly listed in the column 2, non-most-favored-nation duty rates.³⁵

Congressional Recommendations for Change

Since 1966, there have been a number of bills introduced in both the Senate and the House seeking either to grant the President discretionary

31. 19 U.S.C. § 1861 (1970).

32. The Foreign Assistance Act of 1963, Pub. L. No. 88-205 § 402, 77 Stat. 390, (1963) allowed Poland and Yugoslavia to retain the most-favored-nation status granted by President Eisenhower prior to the Trade Expansion Act of 1962. The change permitted the President to extend most-favored-nation treatment to imports from Poland and Yugoslavia "when he determines that such treatment would be important to the national interest and would promote the independence of such country or area from domination or control by international communism." 19 U.S.C. § 1861(b) (1970).

33. 1962 U.S. CODE CONG. ADMIN. NEWS, 3113, 3119 and 3124.

34. Conf. Report No. 2518, 87th Cong., 2d Sess. 3033 (1962), to accompany H.R. 11970, *Id.* at 3135.

35. See General Headnotes and Rules of Interpretation, Tariff Schedules of the United States Annotated § 3 (1972).

authority to extend most-favored-nation treatment or legislating its extension directly to a particular country.³⁶ The Congressional climate which had been growing more receptive to improved American trade relations with China found its first expression in H.R. 10569, the "East-West Trade Relations Act of 1969", legislation proposed by Representative Paul Findley of Illinois, an active proponent of China trade.

The Findley bill was, in its sponsor's words, designed to permit the President "to extend the benefits of most-favored-nation tariff treatment to any Communist country with which we maintain diplomatic relations and which is a member of the General Agreement on Tariffs and Trade . . . and to use trade with Communist countries to normalize relations with these countries."³⁷

While Findley was concerned with a need for improved Sino-American trade relations, his bill as written would not have permitted U.S. extension of most-favored-nation status to China, which neither belonged to GATT nor had diplomatic relations with the United States. In Findley's view, the United States "would take an economic risk in carrying on commercial relations with a state trading company of a country that is not a member of GATT."³⁸

Nevertheless, he reminded the House that withdrawal of most-favored-nation status had occurred in 1951 and that, after 16 years, "it would make good sense" for the President to have "the authority to extend the benefits of equal tariff treatment."³⁹

Never passed, Findley's bill was reintroduced in substantially the same form in the Senate in 1971 as S. 2620, the "East-West Trade Relations Act of 1971." In an important change from the earlier version, the Senate bill would not have limited the extension of most-favored-nation status to countries with which the United States had diplomatic relations. S. 2620 would have permitted a trade agreement containing a most-favored-nation provision to be concluded between the United States "and countries presently not receiving most-favored-nation treatment." In other words, the Senate bill

36. H.R. 10077, 92d Cong., 1st Sess. (1971); H.R. 16694, 92d Cong., 2d Sess. (1972); H.R. 1076, 92d Cong., 1st Sess. (1971); H.R. 10430, 92d Cong., 1st Sess. (1971); H.R. 99676, 89th Cong., 2d Sess. (1969); H.R. 11659, 88th Cong., 1st Sess. (1966); S. 2283, 91st Cong., 1st Sess. (1969); S. 2620, 92d Cong., 1st Sess. (1971); S. 1389, 92d Cong., 1st Sess. (1971). For a general discussion of these proposals, see Malish, *United States East European Trade*, Staff Research Studies No. 4, United States Tariff Commission 22-27.

37. 115 Cong. Rec. 10234-42 (1969) (remarks of Mister Findley).

38. *Id.* at 10235-36.

39. *Id.* at 10235-36.

was designed to permit the extension of most-favored-nation treatment to a country, like China, with which the U.S. did not have diplomatic relations.

Referring to such proposed legislation, Senator Abraham Ribicoff of Connecticut recommended passage of a statute permitting the extension of most-favored-nation status to China in particular. Such legislation, he said, would be "particularly timely in that it could give the President actual authority to conclude a commercial agreement when he visits China." Senator Ribicoff emphasized that the "bill is drafted so that formal diplomatic relations between the two countries need not precede such agreement."⁴⁰

The 92d Congress adjourned without taking any action which would have permitted the extension of most-favored nation status to any Communist country. As an indication of changing U.S. policy on the subject, however, the United States and the Soviet Union entered into a comprehensive trade agreement in October, 1972, which, subject to Congressional approval, extended most-favored-nation tariff treatment to Soviet exports to the United States.⁴¹

Title V of the "Trade Reform Act of 1973", H.R. 6767, submitted to the 93d Congress on April 10, 1973, would empower the President to conclude a trade agreement extending most-favored-nation tariff treatment to China, among other countries now subject to Column 2 rates of duty, subject to a Congressional veto procedure.⁴²

Any United States trade agreement with China, under H.R. 6767, must be limited to an initial period of not more than three years, and may be renewable for additional periods, each not to exceed three years. The President could at any time suspend or withdraw, in whole or in part, the application of most-favored-nation treatment, and the bill also contains a provision which would protect domestic industries from market disruption caused by increased Chinese imports should China receive most-favored-nation treatment under the proposal.

Section 706 of the measure would repeal the embargo contained in the Trade Agreements Extension Act of 1951 on seven furs and skins from the People's Republic of China, and the bill would also repeal Johnson Debt Default Act.

Section 501 of the proposed bill would replace section 231 of the Trade Expansion Act. Except as otherwise provided in the bill, however, most-favored-nation treatment would continue to be denied to products imported from any country or area subject to Column 2 rates of duty, and the

40. THE ROLE OF THE UNITED STATES IN EAST-WEST TRADE, REPORT TO THE COMMITTEE ON FINANCE, 92d Cong., 1st Sess., 1971.

41. White House Fact Sheet, Trade Agreement, Lend-Lease Settlement, Reciprocal Credit Arrangements, Joint U.S.-U.S.S.R. Commercial Commission, October 18, 1972.

42. Title V of H.R. 6767. See Appendix I for full text.

President would have the power to withdraw most-favored-nation treatment from any country when he deems it necessary for national security reasons.

Section 502 would authorize the President to enter into a bilateral commercial agreement conferring most-favored-nation treatment to imports from a country currently subject to Column 2 rates of duty, provided such an agreement promotes the purpose of the legislation and is in the national interest. This provision would apply to the October, 1972 agreement with the Soviet Union.

Five provisions suggested for inclusion in bilateral commercial agreements are enumerated in Section 503, but this Section does not inhibit the President's discretion to include additional commercial agreements. Most of the suggested provisions are contained in the 1972 trade agreement with the Soviet Union, and they may be indicative of provisions to be included in any agreement eventually negotiated with China.

Section 504 of the bill would permit the President to extend most-favored-nation treatment to imports not only from any country which has entered into a bilateral commercial agreement which has entered into force under Section 502, but also to any country which has become a party to an appropriate multilateral trade agreement to which the United States is also a party, such as the GATT. In both situations, the benefits would be subject to a Congressional veto procedure set forth in Section 502(c). The enjoyment of most-favored-nation treatment, however extended, could be limited to the duration of the bilateral agreement or to the period both countries are a party to a multilateral agreement.

Section 505 would establish more easily satisfied criteria for Tariff Commission determination of whether injury to a domestic industry has occurred due to imports from countries granted most-favored-nation treatment.

At this writing, it appears possible that Title V, made controversial by the Congressional opposition to Soviet emigration policy, may be stripped from H.R. 6767, in whole or in part, to expedite favorable committee action and House consideration of the remainder of the bill. Should this occur, it is likely that Title V would be reconsidered, essentially as written, but as a separate bill.

Seeking to avert a situation in which a trade bill would be entirely silent on the most-favored-nation question, two California members of the Ways and Means Committee, Jerry L. Pettis (R-Calif) and James C. Corman (D-Calif), proposed compromise language to the Committee on September 12, 1973.⁴³

43. See The Pettis-Corman formula, Appendix II.

Considerations in Extending Most-Favored-Nation Status

Does China Want Most Favored Nation Treatment From the United States?

While she has not formally sought most-favored-nation treatment for her exports to the United States, it seems evident that China regards MFN status as both politically and economically desirable.⁴⁴ A most-favored-nation clause is ordinarily included in China's foreign trade agreements,⁴⁵ because the People's Republic can hardly be expected to have the capital necessary for the purchase of foreign goods if she is denied fair and meaningful opportunities to earn foreign exchange through the sale of her own exports. Moreover, in the Chinese view American denial of market access, particularly now that most-favored-nation status become part of a U.S.-U.S.S.R. trade agreement—is an unwarranted political discrimination hampering further normalization of relations and inconsistent with the agreement by the United States in the Shanghai Communique to “facilitate the progressive development of trade between the two countries.”⁴⁶

Without most-favored nation status from the United States, China is effectively barred from the world's largest market, a market from which she could expect to earn some of the dollars necessary to purchase the goods American entrepreneurs are so assiduously promoting. If allowed to compete fairly with other exporters to the United States, it has been estimated that with improvements in styling, quality control and marketing tech-

44. In an informal exchange of views on trade relations generally, an official of the China Council for the Promotion of International Trade in Peking told House Majority Leader Hale Boggs and the author in June, 1972, that “your tariff levies on our goods are the highest possible. Remember, trade can only be developed in a favorable political atmosphere.” From author's notes.

45. A recent example is the trade agreement between the Peoples Republic of China and the Republic of Italy, signed in Rome on October 27, 1971 and effective through December 31, 1974, whose Article 4 provides: “(1) Both contracting parties reciprocally grant to each other the treatment of the most favored nation in the matter of customs duties, additional taxes and every other charge, as well as in the matter of formalities, regulations and customs procedures; (2) that provided the preceding paragraph is not applicable to: (a) advantages, favors, privileges and exemptions granted to, or to be granted by each of the contracting parties to bordering countries (including border traffic); (b) advantages, favors, privileges and exemptions granted, or to be granted by each of the contracting parties to countries interested in present or future participation in customs unions or similar institutions. U.S. DEPARTMENT OF STATE (unofficial translation). In a 1958 Treaty of Trade and Navigation between the PRC and the U.S.S.R., the most-favored-nation provision stated simply, at Article 2: “The Contracting Parties shall grant to each other most-favoured-nation treatment in all matters relating to trade, navigation and other economic relations between the two States.” 152 UNITED NATIONS-TREATY SERIES, No. 4534 (1958). For a discussion of China's ideological view and use of the most-favored-nation clause, see Hsiao, *Communist China's Trade Treaties and Agreements (1949-1964)*, 21 VAND. L. REV. 623, 643-44 (1968).

46. Shanghai Communique, 11 INT'L L. MATERIALS 443 (1972).

niques, China could generate \$300 million to \$500 million in export earnings from sale to the United States of labor intensive manufactures.⁴⁷

Finally, the United States currently confers most-favored-nation status on the Nationalist Government on Taiwan, a fact which not only places China at a distinct economic disadvantage but which continues a diplomacy which is a political affront to Peking.

State Trading and the Reciprocity Problem

The *quid pro quo* which a country ordinarily receives for extending most-favored-nation treatment—the return of equivalent treatment by its trading partner—poses a special problem in trade with state trading economies. While the most-favored-nation principle proposes equal access for all foreign exporters to a domestic market, subject only to the forces of competition, nonmarket economies lack the element of private market forces. Exporters to state economies confront but one consumer—the government. In the case of China, the Ministry of Trade may make its purchases on strictly political rather than economic considerations, and rarely will the decision-making process be made public.

From 1965 to 1970, major American exports to China were machinery and equipment, \$395 million; iron and steel \$390 million; crude material, edible oils and fuels, \$360 million; and grain \$355 million.⁴⁸ Major imports from China were textiles, yarn and fabric, \$340 million; animals, meats and fish, \$215 million, fruits and vegetables \$170 million and clothing, \$155 million.⁴⁹ It is currently estimated that the 1973 volume of U.S.-China trade will approach \$900 million and, significantly, it is expected that some \$800 million or more will represent U.S. exports. This underscores the Chinese need for more equitable access to the American market.

It has been estimated that the present import-export mix will continue essentially unchanged until 1980,⁵⁰ though the volume of trade could grow appreciably, depending upon the degree of China's interest in economic advancement and her ability to earn foreign exchange.⁵¹ The dizzy-

47. Chen Kuan-I, *The Outlook for China's Economy*, 63 *CURRENT HISTORY* 103, 107 (1972). Presently the American market for traditional Chinese exports is not large. Dernberger, *Prospects for Trade Between China And The United States*, *CHINA TRADE PROSPECTS AND U.S. POLICY*, *supra*, note 7, pp. 246-47; Perkins, *Is There A China Market?*, 5 *FOREIGN POLICY* 102-03 (1971).

48. JOINT ECONOMIC COMMITTEE, *THE PEOPLE'S REPUBLIC OF CHINA: AN ECONOMIC ASSESSMENT* 35 (1970).

49. *Id.*

50. DERNBERGER, *Prospects for Trade Between China and the United States*, *CHINA TRADE PROSPECTS AND U.S. POLICY* 183, 224-28 (1970). See *supra* note 7.

51. Should China depart from present policy and develop tourist facilities, tourist trade could become an important source of exchange earnings. Yugoslavia and

ing prospect of some 800 million consumers, however, which has put stars in the eyes of many American exporters, and the excitement of would-be importers of irresistible bargains from the Middle Kingdom, must be seen in light of the fact that the volume of American-Chinese trade has never been great, and will likely grow very slowly.⁵² This suggests that improved trade relations, including the problem of reciprocity for most-favored-nation status, are likely to be non-economic in the trade sense.

Many observers have argued that the influence of political factors in the decision-making process of nonmarket economies has made the process inherently discriminatory and that, as a result, the exchange of unlimited most-favored-nation treatment between a capitalist country and a state-trading nation would be an unequal exchange.⁵³ In considering most-favored-nation status for China, then, both sides are likely to experience difficulty in negotiating a trade agreement if commercial factors alone are contemplated.⁵⁴

One of the first comprehensive proposals for dealing with state trading countries and the reciprocity problem was the "commercial considerations clause."⁵⁵ This required the state economy to base its purchases of foreign products exclusively on commercial considerations. Such a provision may be found in Article 17 of GATT⁵⁶ and it has been used in the Treaty of

Hungary, for example, have enjoyed tremendous increases in tourism in the last decade. See *A Foreign Economic Policy for the 1970's, Hearings Before the Subcomm. on Foreign Economic Policy, Joint Economic Comm.*, 9th Cong., 2d Sess. 1215 (1970).

52. In 1900, the combined volume of imports and exports between the two countries totaled \$42,000. DRISCOLL, *Basic Data on the Economy of the People's Republic of China*, OVERSEAS BUSINESS REPORTS 35, Dept. of Commerce (Sept. 1972) [hereinafter cited as DRISCOLL]. This was approximately one percent of the total U.S. overseas trade that year. *China and the United States; Today and Yesterday, Hearings before the Senate Foreign Relations Comm.*, 92d Cong., 2d Sess., 26 (1972). According to Driscoll, the largest amount of trade between the two countries occurred in 1946 when it reached \$558,000. Since relaxation of the embargo, trade has increased, the volume for the first quarter of 1972 being three times the total volume of trade for the preceding year. DERNBERGER, *supra* note 47, estimates that by 1980 the total volume of trade between the two countries could reach \$1.7 billion for that year, or only .5% of U.S. Trade. Preliminary figures for 1972 U.S.-China trade by commodity and value appear in *Trading with The Peoples Republic of China*, OVERSEAS BUSINESS REPORTS 73-16, Dep't. of Commerce (May 1973), at 20-23.

53. See Domke and Hazard, *State Trading and the Most-Favored-Nation Clause*, 52 AM. J. INT'L L. 55 (1958); VERBIT, *TRADE AGREEMENTS FOR DEVELOPING COUNTRIES* 132 (1969).

54. See Berman, *Legal Framework of Trade Between Planned and Market Economies: The Soviet-American Example*, 24 LAW & CONTEMP. PROB. 482, 499 (1959).

55. See Articles 29 and 30 of the Charter for an International Trade Organization, U.N. Conference on Trade and Employment, Final Act and Related Documents, U.S. State Department Publication 3206 (1948).

56. Oct. 30, 1947, 61 Stat. A3 (1947), T.I.A.S. No. 1700, 55 U.N.T.S. 187.

Friendship, Commerce and Navigation between the United States and Japan.⁵⁷ As a practical matter, this provision cannot prevent discrimination which, though evidently political, has an economic basis.

Consideration of most-favored-nation status for China then, as with any state economy, must take into account the very real question of what the United States might obtain by way of *quid pro quo*.⁵⁸ China's assurance of most-favored-nation treatment for U.S. exports, and related arrangements designed to secure fair market access for American goods, are not the sole benefits which should be sought by the United States in a trade agreement with China. As a practical matter, the United States should have something more than marketing opportunities on a par with third countries since, as a nonmarket economy, China cannot grant foreign goods the same benefits as those enjoyed by her own. In addition, China is not a consumer society, and thus the range of American exports marketable in China is limited.

This is not to say the United States should return to the predatory ways of a 19th century foreign trading nation, seeking reciprocity all out of proportion to what is granted. Longstanding political and economic isolation affords ample opportunities for reciprocal nontariff benefits which could and should form a part of any trade agreement in which the United States extends most-favored-nation status to China. Among these could be the settlement of financial and property claims, both public and private;⁵⁹ establishment

57. April 12, 1953 4 U.S.T. 2063 T.I.A.S. No. 2863.

58. The conditions for admission of Poland and Yugoslavia to the GATT suggest that the GATT members felt there was a significant threat of discrimination in trade agreements with state trading nations, and both were initially denied membership. Yugoslavia was admitted in 1961 after having developed a provisional tariff applicable to commercial imports, and Poland was accepted in 1967 after having offered to increase the total value of its imports by not less than seven percent per year. EVANS, *THE KENNEDY ROUND IN AMERICAN TRADE POLICY* 104, 263 (1971).

59. On December 17, 1950, the United States froze Chinese assets in the U.S. in the amount of \$1.3 billion. This action was taken under the authority of the Foreign Assets Control Regulations, 31 C.F.R. § 500.201 (1971). According to the U.S. Treasury Department, Office of Foreign Assets Control, the Chinese assets include \$61.5 million in bullion, currency and deposits; \$24.7 million in letters of credit; \$5.2 million in notes, drafts and debts maturing in one year; other property \$496 million; financial securities \$24.5 million; interests of associated foreign persons \$2.4 million; interests in estates and trusts \$348 million; real and personal property \$6.5 million; and all other property \$4.4 million. In response to this action, China seized American property which has since been found by the Foreign Claims Settlement Commission to be valued at \$196,861,844. This figure includes 539 individual claims totalling \$14,377,726; 44 corporate claims totalling \$122,823,554; 82 claims of religious and non-profit organizations totalling \$58,266,394; and 12 other claims totalling \$1,394,170. See *Blocked Assets and Private Claims. The Initial Barriers to Trade Negotiations between the United States and China*, GA.J. INT'L & COMP. L. 449-55 (1973).

In addition to the private claims of American nationals against China, there are United States Government claims amounting to some \$67,000,000 arising out of loans, credits and lend-lease to the Republic of China prior to 1949. See *Delinquent International Debts Owed to the United States, Hearings Before the House Subcomm. on*

of trade and tourist promotion facilities and opportunities; exchange of trade missions and expanded travel for commercial representatives; arrangements for the settlement of commercial disputes, and for the protection of trademarks and industrial rights and processes; and arrangements for the credit-financing of trade,⁶⁰ among others.

In the past, the United States has used a number of devices to ensure reciprocal concessions in the granting of most-favored-nation status: (a) *A purchase commitment of a certain minimum value of goods annually.* In 1937, the United States extended most-favored-nation treatment to the Soviet Union in exchange for a pledge to purchase at least \$40 million worth of goods the following year.⁶¹ (b) *An agreement to settle existing financial claims.* Poland agreed to settle \$40 million in claims as part of the consideration for most-favored-nation treatment in 1960.⁶² More recently, the Soviet Union agreed to settle \$722 million in lend lease debts as part of the trade agreement concluded in 1972.⁶³ (c) *Provisions against patent and copyright infringement.* These provisions are important in dealing with state trading countries where the means of production are not

Government Operations, 92d Cong., 1st & 2d Sess., at 64, 68-69, 76, 99, 108 (1971-72). The records of the Import-Export Bank reflect a receivable in excess of \$26 million for pre-1949 loans to the Nationalist Government. The Bank's records show the obligation under the heading "China (Mainland)." Export-Import Bank of the United States, Cumulative Record by Country, February 12, 1934 to June 30, 1971, p. 10. At a Senate hearing in 1964, a Bank official suggested this amount was payable by the PRC despite the fact that Peking does not acknowledge the debt. *East-West Trade, Hearing Before the Senate Comm. on Foreign Relations*, 88th Cong., 2d Sess., pt.1, at 192, 199 (1964).

60. Under the provisions of the Johnson Debt Default Act of 1934, 48 Stat. 574, 18 U.S. Code 955, a foreign state is precluded from long-term loans or credits from U.S. private institutions or public agencies so long as that government is in default of debts owing to the United States. The Export-Import Bank, however, is not restricted by this statute, and under the Export Expansion Finance Act of 1971, 85 Stat. 345, 12 U.S. Code 635, the President has discretionary authority in the national interest to permit the Bank to provide credit or financing for U.S. exports to China. Neither would the Johnson Debt Default Act deny such credits or loans to defaulting foreign governments while any such government is a member of both the International Monetary Fund and the International Bank for Reconstruction and Development. Nor are credit sales of agricultural commodities to defaulting nations prohibited if the credit extended is within the range of customary practice for such commodities. 42 Op. Att'y Gen. p. (1963).

61. The commitment to purchase a specific quantity of goods has been used successfully. In October, 1927, the U.S.S.R. pledged to purchase 50 million rubles annually in Persian goods. Domke and Hazard, *supra* note 50, at 57. See generally, Malish, *supra* note 35.1, at 29-39. The executive agreement to extend most favored nation status to the Soviet Union was concluded Aug. 4, 1937, 50 Stat. 1619. It was extended annually until 1942.

62. The President granted most-favored-nation status to Poland by notification to the Secretary of the Treasury. 25 Fed. Reg. 12501 (1960). The claims settlement is recorded at 11 U.S.T. 1960, T.I.A.S. No. 4545.

63. White House Fact Sheet, Trade Agreement, Lend Lease Settlement, Reciprocal Credit Arrangements, Joint U.S.-U.S.S.R. Commercial Commission, October 18, 1972.

privately owned.⁶⁴ In 1964, the United States signed an accord with Romania for the protection of intangible property rights in technology.⁶⁵

As already noted, the political concessions, express or implied, in any trade agreement constitute an additional and occasionally controlling consideration in any agreement with Communist nations.⁶⁶

The October, 1972 trade agreement with the Soviet Union has introduced several items related to reciprocity questions. Article 3 provides that each country may take appropriate measures to protect against dumping.⁶⁷ Article 4 guarantees that all currency payments will be made in dollars or another freely convertible currency. Article 6 states that there will be no governmental immunity from suit or execution of judgment with respect to commercial matters, and the same article also assures the availability of American business facilities in the Soviet Union. A resolution of outstand-

64. The People's Republic of China does not adhere to the Berne Convention for the Protection of Literary and Artistic Works, the 1952 Universal Copyright Convention, 6 U.S.T. 2731, T.I.A.S. No. 3324, and the 1967 Stockholm Convention, 21 U.S.T. 1583, T.I.A.S. No. 6923.

65. Malish, *supra* note 36, at 33.

66. In 1964 Secretary of State Rusk gave some insight into the purposes of trade with Communist countries. He testified before the Senate Foreign Relations Committee as follows:

In my observations today I have tried to emphasize three points: First, trade can be a useful instrument of policy in the contest with communism and in affecting Communist policies, provided it is adapted to the particular situations presented by different Communist countries. . . .

Second, trading policies suited to one period in our relations with a particular Communist Country may not be equally appropriate at another period. . . .

Third, our national purpose can be served either by the denial of trade or the encouragement of trade, depending on circumstances. Furthermore, the denial of trade may be either total or selective, again depending on the circumstances. . . .

Above all, let us avoid the doctrinaire extremes that seem to flourish in this field. . . .

On the one hand . . . trade with Communist countries should not be conducted purely on the basis of commercial considerations and as though there were no political and military issues dividing East and West. . . .

On the other hand . . . trade with the Communist world cannot be effectively used as a blunt instrument. It must be flexibly adapted and flexibly applied on the basis of political, military, and economic realities. And this requires that we make distinctions among Communist countries.

East West Trade, Hearings Before the Senate Foreign Relations Committee, 88th Cong., 2d Sess. 17-18 (1964).

67. Dumping occurs when goods are sold in the foreign country for a price which is lower than the goods are sold for in the country of manufacture. This practice is prohibited by domestic legislation in the United States. Antidumping Act, 42 Stat. 110 (1921), as amended 19 U.S.C. §§ 160-173 (1952). See generally, METZGER, 1 Law of International Trade 739-911 (1966). Article 3 also applies to countervailing duties, Tariff Act of 1930 § 303, 46 Stat. 687, 19 U.S.C. § 1303 (1952), and equalization duties, 46 Stat. 701, 19 U.S.C. § 1336 (1952).

ing claims between the two countries, together with these provisions, might form an important part of any United States-Peoples Republic of China trade agreement.⁶⁸

The Most Favored Nation Clause and A Sino-American Trade Agreement

While the United States would be concerned with securing appropriate concessions for extending most-favored-nation status, it is likely that Peking, too, may be unwilling simply to exchange assurances of most-favored-nation treatment. Indeed, socialist theory rejects the most-favored-nation concept, and China contends that "equal opportunity" to a capitalist market is a tool to weaken smaller nations.⁶⁹

China bases its commercial arrangements, like its political relations, on the principle of "equality and mutual benefit."⁷⁰ By this is meant an exchange in terms which will be equally beneficial to both countries, or nearly so, an exchange of what one has for what one lacks without undue economic advantage to either. This policy helps explain China's practice of importing only that which she is able to finance through exports.⁷¹

Despite a certain ideological aversion to the most-favored-nation principle, China has, as noted, included such a clause in several trade agreements. Article 4 of the 1971 trade agreement between Italy and the People's Republic of China⁷² provides a typical example. That provision is tailored essentially to a market economy, which regulates trade only through tariff walls or similar restrictions, rather than to a state trading nation which directly controls the purchase and sale of merchandise.

Since the recent American-Soviet trade agreement may serve as a model for the extension of most-favored-nation status to other Communist countries, the most-favored-nation clause in that agreement merits comparison with that contained in the agreement between the People's Republic of China and Italy. Article 1 of the American-Soviet agreement provides:

68. See notes 56 and 57, *supra*.

69. See Hsiao, *supra* note 42, at 649-651.

70. On October 1, 1949, Chairman Mao Tse Tung introduced the concept of equality and mutual benefit in his declaration of principles which were to govern the new nation's foreign policy. ECKSTEIN, CHINA TRADE PROSPECTS AND U.S. POLICY, *supra*, note 7 at 128. In a major restatement of China's foreign trade policy, Vice Minister for Foreign Trade, Chou Hua-min said in a speech before the U.N.C.T.A.D. plenary meeting in Santiago on April 20, 1972 that: "All countries, regardless of their social system, should handle their relations with other countries in accordance with the five principles of mutual respect for territorial integrity and sovereignty, mutual non-aggression, non-interference in each others' internal affairs, equality and mutual benefit, and peaceful coexistence." *China's Principled Stand on Relations of International Economy and Trade*, 17 PEKING REVIEW 11, 13 (1972).

71. See *Economic Developments in Mainland China, Hearings Before the Joint Economic Comm.*, 92d Cong., 2d Sess. 15 (1972).

72. See *supra*, note 42.

1. Each Government shall accord unconditionally to products originating in or exported to the other country treatment no less favorable than that accorded to like products originating in or exported to any third country in all matters relating to:

(a) customs duties and charges of any kind imposed on or in connection with importation or exportation including the method of levying such duties and charges;

(b) internal taxation, sale, distribution, storage and use;

(c) charges imposed upon the international transfer of payments for importation or exportation; and

(d) rules and formalities in connection with importation or exportation.

* * *

3. Paragraphs 1 and 2 of this Article 1 shall not apply to (i) any privileges which are granted by either Government to neighboring countries with a view toward facilitating frontier traffic, or (ii) any preferences granted by either Government in recognition of Resolution 21 (II) adopted on March 26, 1968 at the Second UNCTAD, or (iii) any action by either Government which is permitted under any multinational trade agreement to which such Government is a party on the date of signature of this agreement, if such agreement would permit such action in similar circumstances with respect to like products originating in or exported to a country which is a signatory thereof, or (iv) the exercise by either Government of its rights under Articles 3 or 8 of this agreement.⁷³

The most-favored-nation provisions of the two treaties are substantially similar, which suggests that the other provisions of these agreements could likewise occur in some form in any American-Chinese agreement. Among such provisions suggested by the non-most-favored-nation subjects contained in these agreements are provisions for settlement of claims; purchase commitments either from a stated list or for a stated amount of goods; provision against copyright and patent infringement; a requirement that payment be made in dollars or freely convertible currency; anti-dumping protection; provisions disallowing sovereign immunity in disputed commercial transactions; an unrestricted right to use *force majeure* to protect national interests; the exchange of individual and corporate trade representatives; access of legal and natural persons to the domestic courts; and provisions for the

73. The 1972 most-favored-nation provision directly parallels the 1937 provision between the United States and the Soviet Union. In the 1937 agreement, the U.S. granted: ". . . unconditional and unrestricted most-favored-nation treatment in all matters concerning customs duties and charges of every kind and in the method of levying duties, and, further, in all matters concerning the rules, formalities and charges imposed in connection with the clearing of goods through the customs, and with respect to all laws or regulations affecting the role or use, of imported goods within the country." Malish, *supra* note 36 at 30.

elimination or modification of remaining obstacles to trade between the two countries.⁷⁴ A reservation taken by the United States with respect to immigration quotas in the 1946 Friendship, Commerce and Navigation pact with the Nationalist government should not, of course, be repeated,⁷⁵ nor should the United States seek to accomplish unwieldy political objectives in such an accord.

Methods of Extending Most Favored Nation Status To China

There are essentially four ways in which the United States might provide for most-favored-nation tariff treatment on Chinese exports to the U.S. All require Congressional action.⁷⁶ These are (a) amendment of existing inhibiting legislation to permit the President to extend most-favored-nation status to China in his discretion, such as by the simple repeal of section 231 of the 1962 Trade Expansion Act;⁷⁷ (b) enactment of legislation granting the President the power to extend most-favored-nation status to countries currently denied such treatment, including China, such as by passage of a bill similar to the "East-West Trade Relations Act of 1971,"⁷⁸ (c) enactment of a statute tailored for China alone and permitting the President, upon the observance of certain statutory guidelines, to extend most-favored-nation status to China under the terms of a "China Trade Relations Act,"⁷⁹ or (d) Executive negotiation of a U.S.-China trade agreement embracing a most-favored-nation clause and subject to subsequent Congressional approval, as with the 1972 trade agreement between the United States and the Soviet Union.

74. See, e.g., Restrictions on fur imports, 19 U.S.C. § 1202 (1970); Meat inspection laws, 19 U.S.C. § 306, 21 U.S.C. §§ 601-695 (1970). For a general summary of current trade restrictions, see Battle Act Report for 1971, U.S. State Department Publication 8641; Metzger, *Federal Regulation and Prohibition of Trade with Iron Curtain Countries*, 29 L. & CONTEMP. PROBS. 1000 (1964); Berman and Garson, *United States Export Controls—Past, Present and Future*, 67 COLUM. L. REV. 791 (1967); McQuade, *U.S. Trade with Eastern Europe: Its Prospects and Parameters*, 3 L. & POL. INT'L BUS. 42, 71-100 (1971).

75. 63 Stat. 1299, T.I.A.S. No. 1871.

76. The Constitution gives Congress the power to lay and collect taxes, duties, imposts and excises, Art. I, § 8, Cl. 2, and to regulate commerce with foreign nations, Art. I, § 8, Cl. 3. Under Rule XI, Section 21, of the Rules of the House of Representatives, the Committee on Ways and Means has original jurisdiction with respect to all proposed legislation and related matters concerning, *inter alia*, reciprocal trade agreements and revenue measures generally. Rule XXV of the Standing Rules of the Senate provides that all proposed legislation and related matters affecting revenue measures, customs, trade agreements, tariffs and import quotas must be referred to the Senate Committee on Finance. Since "all bills for raising revenue shall originate in the House of Representatives" U.S. CONST., art. I, § 7, it is traditional that tariff legislation is not voted upon by the Senate until prior passage by the House.

77. See *supra*, note 17.

78. S. 2620, 92d Cong., 2d Sess. (1971).

79. See "Romanian Trade Relations Act," S. 1389, 92d Cong., 1st Sess. (1971), proposed but never passed.

Of these alternatives, only (b) and (d) would seem at all possible of achievement during the 93rd Congress. Repeal of Section 231 is most unlikely in the absence of more comprehensive trade policy changes. There has never been any serious evident sentiment in Congress for repeal of that provision by itself, nor would bare repeal provide the kind of guidance to the President in determining the conditions for extending most-favored-nation status which even the most liberal trade legislators have felt important to include in such bills as the 1971 East-West Trade Relations Act. Representative William Moorehead (D-Pa.) did attempt a modification of Section 231 with his H.R. 4716, introduced on February 26, 1973, but his bill has languished. It would permit trade concessions to products of Eastern Europe, including the U.S.S.R., but not to China.

Similarly, a "China Trade Relations Act" would doubtless encounter at least as many obstacles as the Romanian proposal, which languished and died without hearings or debate in the 92d Congress despite support from the Administration and sponsorship by a majority of Ways and Means Committee Members. The cause of China trade has no constituency in the United States which can remotely match an opposition of organized labor, protectionist industry and aroused anti-Communists.

Should the Nixon Administration enter into diplomatic relations with China, the prospects for an agreement on trade would naturally be greatly enhanced and, as with the 1972 American-Soviet agreement, an exchange of most-favored-nation benefits subject to Congressional approval could form a part of it. Without diplomatic relations, a trade agreement concluded between governments—which is the only kind of agreement capable of embracing a most-favored-nation clause—is nearly an impossibility. It would be possible only if China, whose interest in recognition transcends economics, saw such a pact as leading to diplomatic ties, and if the United States could secure unusually significant concessions.

In the absence of diplomatic relations, then, the best prospects for moving toward most-favored-nation status for China, as far as U.S. initiatives are concerned, appears to be passage of legislation designed to give the President authority to conclude trade agreements with nations, including China, with which we lack State relations.⁸⁰ This would encourage a dialogue with the Chinese through existing informal channels preparatory to negotiation of a

80. Such authority was proposed as early as 1965. See *Report to the President of the Special Committee on U.S. Trade Relations with East European Countries and the Soviet Union*, The White House, April 29, 1965. A complete text on the report appears at *Hearings, Joint Economic Comm.*, *supra* note 42, at 1147-71. For an example of a trade agreement concluded in the absence of diplomatic relations, see the text of the 1958 Sino-Japanese trade accord which appears at 104 Cong. Rec. 6218-19 (April 3, 1958).

trade agreement. So long as the President lacks such authority, and the prospect of Congressional undoing of Executive initiatives exists, the Chinese and the Americans are deprived of the incentive to seek a trade policy of meaningful scope.

For the Congress to grant the President conditional authority to extend most-favored-nation status does not, of course, require its extension to China. It does permit, within the guidelines of the legislation proposed, trade negotiation unhampered with the potential of non-trade perils not uncommon in Congressional consideration. One of these, already mentioned, is the refusal of the Ways and Means Committee during the 92d Congress to consider most-favored-nation status for Romania despite the fact that most Committee Members and the Administration favored passage and that Romania is a GATT member, with growing trade with the United States which is chronically unbalanced, pursuing a policy of friendship with the United States and independence of the Soviet Union. Another example is the troublesome non-trade issue of the Soviet tax on emigrating Jews which has obscured the merits of the 1972 American-Soviet trade agreement and delayed its effective operation.⁸¹

Congress does have a legitimate and important interest in the terms of any foreign trade agreement, particularly so where the other party is a nonmarket country unable to reciprocate in kind trade benefits the United States can assure with most-favored-nation status. The Congressional interest can be safeguarded by providing in the statute enabling the President to extend most-favored-nation status certain guidelines and conditions on the exercise of that authority. These could include, for example, a limitation on the duration of the agreement, a suggestion of benefits to be obtained, provisions for suspension or termination of the agreement, and requirements with respect to Congressional review of the agreements concluded by the President.

Should the United States Extend Most Favored Nation Status to China?

Assuming meaningful concessions can be secured in exchange, there is no good reason to withhold most-favored-nation tariff treatment from China's exports. To deny most-favored-nation status to China would be to repeat the

81. On October 4, 1972, Representative Charles Vanik of Ohio introduced, with the support of seventy co-sponsors, H.R. 17000, a bill to prohibit most favored nation treatment and other trade benefits to any non-market economy country which denies to its citizens the right or opportunity to emigrate, or which imposes more than nominal emigration fees upon its citizens. 118 Cong. Rec. H 9165, (1972). Companion legislation, Amendment No. 1691 to S2620, was introduced in the Senate the same day by Senator Henry Jackson of Washington, who was joined by an overwhelming majority of seventy-two members of the Senate as co-sponsors. 118 Cong. Rec. S 16835 *et seq.*

unjustified continuation of the American trade embargo which lasted nearly two decades beyond the point at which it ought to have been ended.

Why should China be considered for most-favored-nation treatment? The short answer is that there is really no sound basis upon which to exclude China from such consideration. Most-favored-nation status was withdrawn in 1951, at the height of the Cold War, as American and Chinese troops faced each other in active combat in Korea, and even then the grounds for excluding China from trade benefits were more economic than strategic or political. That this policy was continued without a new rationale by the Trade Expansion Act in 1962 is no good reason for its perpetuation. Indeed, the United States has conceded the political discrimination involved in the denial of most-favored-nation treatment in connection with the 1972 trade agreement with Soviet Union.⁸²

Concern has been expressed in the Congress that improved trade relations with China would bring about dumping or other unfair trade practices,⁸³ but protection against such abuses is afforded by other statutory means than denial to China of access to the American market enjoyed by most countries of the world. Canada, which has encouraged Chinese exports, has had no dumping problem and, more importantly, China and the United States would be certain in any trade agreement to exchange substantially the same pledges against market disruption as are included in the 1972 American-Soviet agreement.

Another answer to those who fear a flooding of American markets with Chinese goods is that it would be foolhardy for China to breach any pledge against market disruption, or to violate any voluntary export restraints or American anti-dumping laws. To do so would risk the most-favored-nation benefit after making costly investments in market research, capital and plant necessary to compete with other, more experienced exporters to the United States. Likewise, it would jeopardize political gains of equal or even greater importance.

82. At the press conference announcing the agreement, Secretary of State Rogers, in answer to a question about the MFN provision, stated that the provision was designed "to eliminate the discrimination that has been involved in our trade with the Soviet Union" because, he reiterated, "(t)he fact of the matter is that the present situation discriminates against the Soviet Union . . . because we have had the problem of lend lease." White House Fact Sheet, Trade Agreement, Lend Lease Settlement, Reciprocal Credit Arrangements, Joint U.S.-U.S.S.R. Commercial Commission, October 18, 1972, Press Conference, 2. Since a lend lease settlement agreement had been reached, Rogers said, "we would like to have the discriminatory tariffs which have been directed against the Soviet Union removed."

83. See *supra*, note 64. Senator Strom Thurmond placed in the Congressional Record a resolution unanimously adopted by the South Carolina Legislature memorializing the President and the Congress to protect the State's textile industry against Chinese competition. 118 Cong. Rec., S 10361; Representative William Jennings Bryan Dorn made the same resolution a matter of record at 118 Cong. Rec. E.6689.

Most-favored-nation treatment for China is consistent with the commendable policy of treating Peking and Moscow even-handedly, which suggests that American foreign policy objectives are badly served should China be singled out for discriminatory tariff treatment. A good case could be made in fact that China, objectively less militarily dangerous to the United States, should receive more liberal concessions than the Soviet Union.⁸⁴

Senate Majority Leader Mike Mansfield (D-Mont.), in a speech before the Johns Hopkins School of Advanced International Study on March 15, 1973, expressed the "hope that Congress will provide authority to negotiate a most-favored-nation arrangement with China along the lines of the recent agreement with the Soviet Union." He noted that such an agreement "could be consummated notwithstanding the absence of formal diplomatic relations." Adding that Congressional reluctance to grant most-favored-nation treatment to the Soviet Union was jeopardized by a pending bill intended to withhold trade concessions with Soviet policy on emigrating Jews was changed, he said "[t]hat should not deter Congressional action on most-favored-nation treatment for China. The two situations are not analogous," he said "and it would be most unfortunate to lose momentum which has been generated in the Sino-U.S. rapprochement over what is an unrelated issue in Europe."

On the first day of the 93d Congress, Representative Dominick Daniels (D-NJ) introduced H.R. 151, a bill to prohibit most-favored-nation treatment and other trade benefits to any nonmarket economy country denying to its citizens the right to emigrate or imposing more than nominal fees upon its citizens as a condition of emigration.⁸⁵ To a similar effect, Representative William Green (D-Pa) introduced H. J. Res. 34.⁸⁶

The powerful Wilber D. Mills, (D-Ark.) Chairman of the House Committee on Ways and Means which has jurisdiction over trade legislation, co-authored with Representative Charles Vanik (D-Ohio) a "Freedom of Emigration Act."⁸⁷ Introduced in February, 1973 and co-sponsored by an absolute majority of members of the House, the bill had been introduced late in the 92d Congress in the Senate by Senator Henry M. Jackson (D-Wash).⁸⁸ The "Jackson Amendment" as it came to be known was, in Vanik's words, "designed to restrain trading privileges or 'most-favored-nation treatment' with any nation in East-West trade until that country

84. For expressions of this view as early as 1970, see *A Foreign Economic Policy for the 1970's Hearings Before the Subcomm. on Foreign Economic Policy, Joint Economic Comm.*, 91st Cong. 2d Sess. Pt. 6, 217, 226. "East-West Economic Relations", December 7, 8, and 9, 1970.

85. Cong. Rec., House, Jan. 3, 1973, 93d Cong., 1st Sess., H 30.

86. Cong. Rec., House, Jan. 3, 1973, 93d Cong., 1st Sess., H 33.

87. On October 3, 1973 the House Ways and Means Committee reported out The Freedom of Emigration Act, H.R. 10710.

88. Cong. Rec., House, Feb. 7, 1973, 93d Cong., 1st Sess., H 845-851.

ceases its discriminatory emigration policies." Vanik acknowledged that the measure most directly affected the Soviet Union for that country's "head tax" preventing the emigration of Jews.⁸⁹ Later in the 93d Congress Jackson reintroduced his amendment in the Senate.⁹⁰ The Mills-Vanik and Jackson amendments have greatly, if unintentionally, complicated and delayed Congressional consideration of a comprehensive trade bill and thus the possibility of most-favored-nation tariff treatment for China. That Jackson had no intention of depriving China of the possibility of most-favored-nation benefits is evident from his remarks introducing his amendment on April 10, 1973, when he said his proposal was directed at "the Soviet Union and the countries of Central Europe."⁹¹ Indeed, Jackson had gone quite beyond the Nixon Administration's China policy in calling for diplomatic relations between the United States and the People's Republic of China earlier in the year.⁹²

In a report to the House of Representatives on his return from Peking, Majority Leader Hale Boggs said he favored appointment of a "Sino-American Commercial Commission" charged with improving American-Chinese trade

89. *Id.* at H 845.

90. The "Jackson Amendment", Amendment 79, 93d Cong., 1st Sess., provides as follows:

"At the end of Title V of the Act, add the following new section:
"EAST-WEST TRADE AND FREEDOM OF EMIGRATION

"Sec. 507, (a) To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of this Act or any other law, after October 15, 1972, no nonmarket economy country shall be eligible to receive most-favored-nation treatment or to participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, during the period beginning with the date on which the President of the United States determines that such country—

"(1) denies its citizens the right or opportunity to emigrate, or

"(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever, or

"(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice, and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

"(b) After October 15, 1972, a nonmarket economy country may participate in a program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and shall be eligible to receive most-favored-nation treatment, only after the President of the United States has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country, shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and semi-annually thereafter so long as any agreement entered into pursuant to the exercise of such authority is in effect."

91. Cong. Rec., Senate, April 10, 1973, 93d Cong., 1st Sess. S 6920.

92. *The Washington Post*, February 5, 1973, p. A 3.

relations, acknowledging that this raised the question of most-favored-nation treatment for China.⁹³

In considering the type and volume of trade in the foreseeable future, there is little likelihood of the United States suffering from political manipulation of trade by China, simply because there is no risk of the United States becoming dependent upon China either as a supplier or purchaser. Nor, for the same reason, need China fear political manipulation of United States trade policy. Finally, there must be a reasonable equilibrium in trade or China will be without the foreign exchange to continue purchasing American exports, a fact which recalls the lines of poet Robert Frost: "Before I built a wall I'd ask to know what I was walling in or walling out."

The Prospects For Most Favored Nation Treatment For China

It is ironic in view of the extent to which a policy of communist containment has shaped American economic policy toward China since 1949 that the more serious opponents to normalized American trade relations with Peking are likely to argue not that Sino-American trade will menace international peace or the security of the United States, but that it will jeopardize American jobs.

An example of this sentiment is the protectionist Hartke-Burke legislation first introduced during the 92d Congress,⁹⁴ and offered again in the 93d. On January 3, 1973, the opening day of the 93d Congress, Representative James Burke (D-Mass) reintroduced the Hartke-Burke bill as the "Foreign Trade and Investment Act of 1973," H.R. 62.⁹⁵ Senator Vance Hartke introduced the same bill the following day in the Senate as S. 151.⁹⁶ If passed, Hartke-Burke would, among other things, impose quotas on virtually all imports, provide new and more speedily imposed dumping penalties, and authorize the President to prohibit the export of American technology. Products with foreign components would, under the bill, be required to be labeled to that effect, and advertising of such goods would have to disclose not only the component, but the foreign nation in which it was produced.

93. 118 Cong. Rec., 7660-64 (1972). Boggs had elaborated this proposal in a statement to the Joint Economic Committee, *infra* note 43, at 143-48. Since the Boggs proposal, a "National Council for the U.S.-China Trade" has, with U.S. Government encouragement, been formed in Washington, D.C.

94. S. 151 and H.R. 62. Ways and Means Committee Chairman Wilbur D. Mills (D-Ark.) is on record in opposition to this legislation as "devastating" in scope. Interview with *Der Spiegel*, Sept. 11, 1972, 102, unofficial translation from German by the Congressional Research Service of the Library of Congress. In the 93rd Congress the House Ways and Means Committee is presently holding hearings on H.R. 6767, the Nixon administration proposal. 93d Cong., 1st Sess. (1972).

95. Cong. Rec., House, Jan. 3, 1973, H 28, 93d Cong., 1st Sess.

96. Cong. Rec., Senate, Jan. 4, 1973, S 31, 93d Cong., 1st Sess.

Present law permitting foreign assembly of American products for shipment back to the United States and dutiable only on a value added basis would be repealed.

With strong support from organized labor, Hartke-Burke or legislation similarly conceived could play havoc with consideration of trade legislation, particularly with legislation embodying the possibility of increased imports from China. The adverse effect of foreign competition on labor-intensive sectors of the economy has greatly sensitized Congress to appeals for protection of American industries and jobs.⁹⁷ The danger to legislation designed to authorize Presidential grant of most-favored-nation status is not only that it may be supplanted with more restrictive legislation, but that, even if passed, it may be fatally encumbered with inhibiting amendments.

In addition to opposition on economic grounds, there remains potential opposition to improved trade relations with China on political and ideological grounds. Pressure on Congress by groups traditionally hostile to Peking is likely to occur whenever Congress takes up legislation permitting the extension of trade benefits to China, though such efforts have lost their bite. Among these groups is the "Committee of One Million" which emerged to oppose improved political relations with Peking and which includes among its steering committee members Senate Minority Leader Hugh Scott, Senator Peter Dominick of the Committee on Armed Services, Rep. Thomas Morgan, Chairman of the House Foreign Affairs Committee, and Rep. Clement Zablocki, Chairman of the National Security Subcommittee of the House Foreign Affairs Committee.

Despite likely opposition, however, encouragement might be taken from the fact that Senate Minority Leader Scott, on his return from a visit to China, suggested in June, 1972 that most-favored-nation status for China was premature only because it ought first to be extended with better reason to other nations and that its extension to China might follow conclusion of the war in Vietnam.⁹⁸ With the end of the Indochina war, and the 1972 agreement to extend most-favored-nation status to the Soviet Union, it appears close to the time when most-favored-nation status for China will enjoy Congressional support.

In the end, it will be national self-interest which determines American trade

97. Both the Democratic and Republican Platforms, adopted in 1972 pledge vigorous action to protect American jobs from foreign competition, particularly from low wage nations. The AFL-CIO Executive Council went on record on August 2, 1973 in opposition to H.R. 6767 and in favor of the Burke-Hartke bill. Representative Burke, calling the administration's trade bill one that "will cost thousands of working men their jobs," placed the AFL-CIO statement in the congressional record. 119 Cong. Rec. H. 7468 (daily ed. Aug. 3, 1973).

98. *Economic Developments in Mainland China*, *supra* note 69, at 22,

policy toward China, and, for a nation seeking new markets and recognizing that concessions will be required to obtain them, most-favored-nation status for China will be both logical and necessary. Senator James Pearson, a Republic of Kansas, expressed this awakened interest in China trade in the closing days of the 92d Congress: "I don't want to be cynical of my constituency, but I notice my wheat farmers become much more tolerant of national philosophies and ideologies when there is a chance to sell more wheat."⁹⁹

99. *Id.* at 26.

APPENDIX I**“TITLE V—TRADE RELATIONS WITH COUNTRIES NOT ENJOYING MOST-FAVORED-NATION TARIFF TREATMENT*"****“SEC. 501. EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS.**

“(a) Except as otherwise provided in this title, the President shall continue to deny most-favored-nation treatment to the products of any country or area, the products of which were not eligible for column 1 tariff treatment on the date of enactment of this Act.

“(b) The President is authorized to deny such most-favored-nation treatment to all of the products of any country or area if in his judgment such action is necessary for reasons of national security.

“SEC. 502. AUTHORITY TO ENTER INTO COMMERCIAL AGREEMENTS.

“(a) Subject to the provision of subsections (b) and (c) of this section, the President may authorize the entry into force of bilateral commercial agreements providing most-favored-nation treatment to the products of countries heretofore denied such treatment whenever he determines that such agreements with such countries will promote the purposes of this Act and are in the national interest.

“(b) Any such bilateral commercial agreement shall—

(1) be limited to an initial period specified in the agreement which shall be no more than three years from the time the agreement enters into force, except that it may be renewable for additional periods, each not to exceed three years, provided a satisfactory balance of trade concessions has been maintained during the life of each agreement and provided further that the President determines that actual or foreseeable reductions in United States tariffs and nontariffs barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to a bilateral commercial agreement with the United States;

(2) provide that it is subject to suspension or termination at any time for national security reasons, or that the other provisions of such agreement shall not limit the rights of any party to take any action for the protection of its security interests; and

(3) provide for consultations for the purpose of reviewing the operation of the agreement and relevant aspects of relations between the United States and the other party.

“(c)(1) An agreement referred to in subsection (a) or an order referred to in section 504(a) shall take effect only after the expiration of 90 days

* A useful summary of and reference to testimony before the Committee on Ways and Means on Title V of H.R. 6767 appears in Part 15 of *Trade Reform*, Hearings before the Committee on Ways and Means, House of Rep., 93d Cong., 1st Sess. 5267-76.

from the date on which the President delivers a copy of such agreement or order to the Senate and to the House of Representatives, if between the date of delivery of the agreement or order to the Senate and to the House of Representatives and the expiration of the 90-day period neither the Senate nor the House of Representatives has adopted a resolution, by an affirmative vote by the yeas and nays of a majority of the authorized membership of that House, stating that it disapproves of the agreement or order.

“(2) For purposes of this subsection, there shall be excluded from the computation of the 90-day period the days on which either House is not in session because of an adjournment of more than three days to a day certain or an adjournment of Congress sine die. The agreement referred to in subsection (a) or order referred to in section 504(a) shall be delivered to both Houses of the Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House of Representatives is not in session and to the Secretary of the Senate if the Senate is not in session.

“SEC. 503. ADDITIONAL PROVISIONS.

“(a) Bilateral commercial agreements under this title may in addition include provisions concerning:

- (1) safeguard arrangements necessary to prevent disruption of domestic markets;
- (2) arrangements for the protection of industrial rights and processes, trademarks and copyrights;
- (3) arrangements for the settlement of commercial differences and disputes;
- (4) arrangements for the promotion of trade including those for the establishment or expansion of trade and tourist promotion offices, for facilitation of activities of governmental commercial officers, participation in trade fairs and exhibits and the sending of trade missions, and for facilitation of entry, establishment and travel of commercial representatives; and
- (5) such other arrangements of a commercial nature as will promote the purposes of this Act.

“(b) Nothing in this section shall be deemed to affect domestic law.

“SEC. 504. EXTENSION OF MOST-FAVORED-NATION TREATMENT.

“(a) The President may extend most-favored-nation treatment to the products of a foreign country which (1) has entered into a bilateral commercial agreement and such agreement has entered into force pursuant to section 502, or (2) has become a party to an appropriate multilateral trade agreement to which the United States is also a party, and the President has issued an order extending such treatment, which order has taken effect pursuant to section 502(c).

“(b) The application of most-favored-nation treatment shall be limited to the period of effectiveness of the obligations of the United States to such country under such bilateral commercial agreement or multilateral agreement.

“(c) The President may at any time suspend or withdraw any extension of most-favored-nation treatment to any country pursuant to subsection (a), and thereby cause all products of such country to be dutiable at the column 2 rate.

“SEC. 505. MARKET DISRUPTION.

“(a) A petition may be filed or a Tariff Commission investigation otherwise initiated under section 201 of this Act in respect of imports of an article manufactured or produced in a country, the products of which are receiving most-favored-nation treatment pursuant to this title, in which case the Tariff Commission shall determine (in lieu of the determination described in section 201(b) of this Act) whether imports of such article produced in such country are causing or are likely to cause material injury to a domestic industry producing like or directly competitive articles, and whether a condition of market disruption (within the meaning of section 201(f)(2) of this Act) exists with respect to such imports.

“(b) For the purposes of sections 202 and 203 of this Act, an affirmative determination of the Tariff Commission pursuant to subsection (a) of this section shall be treated as an affirmative determination of the Tariff Commission pursuant to section 201(b) of this Act, provided, however, that the President, in taking action pursuant to section 203(a)(1) of this Act, may adjust imports of the article from the country in question without taking action in respect of imports from other countries.

“SEC. 506. EFFECTS ON OTHER LAWS.

“The President shall from time to time reflect in general headnote 3(e) of the Tariff Schedules of the United States the provisions of this title and actions taken hereunder, as appropriate.”

APPENDIX II

PETTIS-CORMAN FORMULA

The President may extend, or continue to extend, most-favored-nation treatment to the products of any state trading country only if he finds—

“(1) that the agreement under which the most-favored-nation treatment is being extended will result in a satisfactory balance in trade concessions, and that the treatment to be accorded United States products by such country is as advantageous as the treatment such country extends to the products of other countries extending nondiscriminatory treatment to such country;

“(2) that the agreement contains provisions with respect to safeguard arrangements necessary to prevent disruption of domestic markets and that such provisions, together with United States laws governing practices with respect to imports, are being administered in such a manner as to prevent material injury to domestic producing interests competing with the products of state trading nations which material injury results from conditions in their labor markets, including the absence of a free labor market based upon reasonable choice of the labor regarding his employment and the opportunity to bargain collectively on the terms and conditions of work;

“(3) in an annual report to the Congress, that such nation is evidencing reasonable progress in the observance of internationally agreed upon principles of human rights (including the rights of freedom of emigration and free expression of ideas). The annual report required by this paragraph shall, with respect to any country, include information as to the nature and implementation of emigration laws and policies, and restrictions or discrimination applied to or against persons wishing to emigrate; and

“(4) that the initial agreement under which the most-favored-nation treatment is being extended is for a period of not more than three years, and that such agreement may be extended (for a period of not more than three years at any one time) only if the President recommends, and the Congress concurs, in such extension. If at any time the President finds that it is in the national security interest to terminate any such agreement with a state trading nation, he shall do so. In addition if, during the 90 days following any annual report, either House of Congress finds that any of the above conditions have not been met, that House can by majority vote veto the extension of Most Favored Nation treatment.