

# POLITICAL RESTRAINTS ON EAST-WEST TRADE

## East-West Trade Regulation in the United States (1974 Trade Act, Title IV)

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### I. General Survey

In the long history of United States foreign trade legislation, the 1974 Trade Act<sup>1</sup> marked a turning point in shaping American policies regarding economic cooperation with the outside world. In this respect it may be compared to its predecessor, the 1934 Trade Agreements Act,<sup>2</sup> which sought to save the American economy from the economic depression of the 1930's. In 1934 bilateral trade agreements were intended to open new markets to American exports in order to stimulate employment, production and investment. In 1974 the basic purpose was still the same.

There are other analogies which come to mind. Both the 1934 and 1974 legislation came into being after protectionist policies demonstrated their futility. Both were preceded by a public discussion demonstrating that free trade partisans were in the ascendance.

Here, however, similarities end. The 1934 Trade Agreements Act saw a solution in the negotiation of bilateral trade agreements, while the 1974 Trade Act addressed itself to the development of open and non-discriminatory world trade. The principal mechanism proposed for the realization of this goal was the General Agreement on Tariffs and Trade [GATT], which was to be given new responsibilities and functions beyond those which it had exercised since its formation in 1947. The

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<sup>1</sup>Trade Act of 1974, 19 U.S.C. §§ 2101-2487 (Supp. V 1975)..

<sup>2</sup>Trade Agreements Act, Pub. L. No. 73-316, ch. 474, 48 Stat. 943 (1934) (current version at 19 U.S.C. §§ 1351-1354 (1970) ).

1934 Act approached trade liberalization on a state to state basis, while the 1974 Act envisaged United States trade policies as addressed to the international community as a whole.

This approach forced Congress to distinguish between the different groups of which the international community consists, according to economic structure and level of development. The 1974 Trade Act addressed itself to three classes of United States trading partners: Western industrialized market economies, less developed countries, and non-market economy (socialist) countries, which are the subject of this essay.

Under the United States Constitution, Congress has power "To lay and collect Taxes, Duties, Imposts . . ." and "To regulate Commerce with foreign nations . . ." <sup>3</sup> Therefore any concession either as regards the lowering of tariffs or regulation of trade requires either prior or consequent approval of Congress, even if part of an international trade agreement. Beginning with the 1934 Trade Agreements Act, U.S. trade legislation has also included authorization for the Executive branch to negotiate trade agreements with foreign countries, in order to reach a regime of trade relations essentially meeting the standards set up by the Congress. The drafting of these standards has typically occasioned considerable controversy, and the 1974 Act proved to be no exception.

## II. The New Approach

As regards trade with the socialist countries, the relevant phrase stating the purpose of the 1974 Act is as follows: "through trade agreements affording mutual benefits . . . to open up market opportunities for United States commerce in nonmarket economies; . . ." <sup>4</sup>

When compared with the Trade Expansion Act of 1962, this phrase illustrates a major policy shift. The 1962 Act authorized the President to negotiate tariff concessions in the so-called Kennedy Round, where one of the purposes was "to prevent Communist Economic penetration." <sup>5</sup> The tenor of the 1974 Act is thus markedly different from the earlier legislation, and suggests a basic reversal of policies followed prior to its enactment. In effect, the aim of the 1974 Act is to remake the system of trade controls which until quite recently was designed to restrain, rather than to expand, trade with the socialist bloc.

Title IV of the 1974 Trade Act, "Trade Relations With Countries Not Currently Receiving Nondiscriminatory Treatment," regulates United States participation in East-West trade. Its original plan was comparatively simple. The bill submitted to the Congress by the Nixon Ad-

<sup>3</sup>U.S. CONST. art. I, § 8, cls. 1,3.

<sup>4</sup>19 U.S.C. § 2102(5) (Supp. V 1975).

<sup>5</sup>Trade Expansion Act of 1962, 19 U.S.C. § 1801(3) (1970).

ministration in March, 1973 upheld the general reservation that most-favored nation [MFN] treatment should not be extended to communist countries except when it is in the national interest. Under the original plan, a communist country could be given MFN status either through a bilateral or multilateral (*i.e.*, GATT) trade agreement. New commercial agreements were to be made for periods not exceeding three years, and could be renewed for three additional years, provided that a satisfactory trade balance had been maintained and that reductions in trade barriers by the United States had been reciprocated by the other party. Import relief provisions followed procedures analogous to those applicable to trade with market economy countries. In general, the scheme of the Act was to normalize the East-West trade regime following world trade practices, and to avoid exceptions from general rules.<sup>6</sup>

The adopted Act differed profoundly from the initial plan. In the opinion of the Congress, the integration of the socialist countries into the world trade system calls for concessions, which though not of an economic nature, nevertheless signify a greater compliance with the practices of democratic government. Before admitting socialist countries to the benefits of United States economic cooperation, including credits, credit guarantees, insurance and investment guarantees, Congress also insisted on settling claims for Lend-Lease and the nationalization of U.S. property. Finally, it felt that an East-West trade regime must provide for safeguards to protect the economy of the United States from the concentration of economic power in the hands of socialist governments.

Proponents of the liberalization of East-West trade, including many American corporations doing business in the East and the State Department, favored unrestricted extension of MFN status. They stated that the world has reached a point where economic interdependence is the norm. According to them, MFN status would bring about a normalization of trade relations with these countries and ultimately lead to a more stable world order. Conditioning trade upon political constraints was seen as meddling in the internal affairs of sovereign nations, and as a practice potentially detrimental to detente. In the words of then Secretary of State Kissinger, when he addressed the Senate Finance Committee:

Detente as we see it, is not rooted in agreement of values; it becomes above all necessary because each side recognizes that the other is a potential adversary in a nuclear war. To us, detente is a process of managing relations with a potentially hostile country in order to preserve peace while maintaining our vital interests. In a nuclear age this is, in itself, an objective not without moral validity—it may, indeed, be the most profound imperative of all.

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<sup>6</sup>19 U.S.C. §§ 2431-2441 (1970).

Detente is found in a frank recognition of basic differences. Precisely because we are conscious that these differences exist, we have sought to channel our relations, with the U.S.S.R. into a more stable framework—a structure of interrelated and interdependent agreements. Forward movement in our relations should be on a broad front so that groups and individuals in both countries will have a vested interest in the maintenance of peace and growth of a stable international world order.<sup>7</sup>

American corporations argued that the unrestricted granting of MFN treatment to nonmarket countries would open up a vast new market which had been sorely neglected in the past. Mr. Eugene Moss, President of the Board of Directors of the East-West Trade Council stated:

The U.S.S.R. and other East European countries, for example, in 1971, did \$20 billion worth of trade with the Western nations and Japan. That was more than 30 times the U.S. trade with the socialist countries. The total U.S. trade with Eastern European countries, excluding the U.S.S.R., in 1971 was only 5% of those countries' total trade with the West.<sup>8</sup>

The reason for the low trade percentage was that American producers could not compete with the other Western nations who were extending much needed government credits and investment guarantees to the socialist countries. The nonmarket nations need MFN treatment because they are traditionally short of foreign currency, due to the fact that their imports usually exceed exports. Upon extension of MFN treatment, the corporate spokesmen reasoned, American goods would finally be able to compete effectively for this market. The socialists would be able to buy from us, because they would find it profitable to sell to us. It was pointed out that in this even trade situation, American goods might be able to take market-share from other Western competitors, as American technology and machinery are held in the highest regard in the East.<sup>9</sup>

### III. Growth of the East-West Trade Regulations

The course of United States trade with socialist countries has a considerable history. Since the recognition of the Soviet Union and the "Gentlemen's Agreement" of November 16, 1933,<sup>10</sup> the United States

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<sup>7</sup>Hearings on H. R. 10710 Before the Senate Finance Committee, 93d Cong., 2d Sess. 454 (1974) (statement of Sec. of State Henry A. Kissinger).

<sup>8</sup>Hearings on H. R. 10710 Before the House Committee on Ways and Means, 93d Cong., 1st Sess. 3517 (1973) (statement of Eugene Moss).

<sup>9</sup>*Id.*

<sup>10</sup>The Litvinoff Agreement, Nov. 16, 1933, United States-Russia, U.S. DEPT OF STATE, EASTERN EUROPEAN SERIES, NO. 1 (1933).

has treated trade with Russia as a component of its foreign policy. For instance, the United States-Soviet Commercial Relations Agreement of July 13, 1935 became a casualty of the cold war in 1951. Following conversion of a number of the East European countries into Soviet satellites, the United States responded to the expansion of Soviet power by restricting trade with socialist countries in a manner clearly resembling war-time measures.<sup>11</sup>

An important component of these restrictions was the Trading with the Enemy Act of 1917,<sup>12</sup> which provided a workable basis for controlling economic cooperation with the socialist countries. Similarly, the Johnson Debt Default Act of 1934,<sup>13</sup> which prohibited private persons from engaging in certain financial transactions involving foreign governments which were in default of their obligations to the United States, was also used as an instrument for restricting trade with socialist countries.

Pursuant to the Trading with the Enemy Act, the Treasury Department issued Transaction Control Regulations.<sup>14</sup> They authorize the scrutiny and licensing of all exports to communist countries according to classes of goods and to the country to which the delivery is to be made. The power to license such exports is shared by the Treasury and Commerce Departments; in practice, so as to avoid conflicts over authority, the Treasury Department automatically confirms export licenses approved by the Commerce Department.<sup>15</sup>

The most important legislation specifically designed to impose controls on trade with communist nations was the Export Control Act of 1949,<sup>16</sup> which was replaced twenty years later by the Export Administration Act of 1969.<sup>17</sup> The export control mechanisms of these Acts are administered by the Office of Export Control of the Bureau of International Commerce of the Department of Commerce. The Office has compiled a Commodity Control List, which by an ingenious method permits the regulatory agency to control the flow of exports in support of United States foreign policy. The Commodity Control List classifies, according to a code letter, each commodity requiring an export license from the Office of Export Control. Correspondingly, each country to which American exports may be directed is grouped in one of eight categories according to another classification system designated by the letters from Q to Z. Thus, the resultant combination of two letters indicates which commodities going to certain destinations will require an export license.

<sup>11</sup>See Grzybowski, *United States-Soviet Union Trade Agreement of 1935*, in EAST-WEST TRADE 3 (1973).

<sup>12</sup>50 U.S.C. app. §§ 1-44 (1970).

<sup>13</sup>18 U.S.C. § 955 (1970).

<sup>14</sup>31 C.F.R. §§ 505.01-.60 (1976).

<sup>15</sup>*Id.* § 500.533(a)(1).

<sup>16</sup>Export Control Act of 1949, Pub. L. No. 81-11, ch. 11, 63 Stat. 7 (1949).

<sup>17</sup>50 U.S.C. app. §§ 2401-2413 (1970) (amended 1972 & 1974).

Commodities listed under category "A" require an export license for all destinations, while all countries in group "Z" require export licenses for all classes of goods.

In 1969 the Export Administration Act<sup>18</sup> revised the policies which the export controls were designed to serve. The 1949 Act had been intended to prevent any distribution of commodities abroad which would be of significant detriment to the military or economic well-being of the United States. While the 1969 Act retained the entire mechanism of controls and regulations governing the licensing of exports, it modified significantly the overall purpose of trade restrictions. Absolute prohibition of exports was limited only to those items which would make a "significant contribution to the military potential" of the country of destination.<sup>19</sup> In addition, the 1969 Act was no longer specifically oriented against communist-dominated nations.

The Export Administration Act of 1969 was the result of a growing conviction that the 1949 Act had failed to achieve its purpose. The Soviet Union and the People's Republic of China [P.R.C.] had forged ahead with programs of economic and military development. The 1949 Act had merely diverted socialist trade from the United States to other countries that followed a less restrictive policy. Therefore, the 1969 Act eliminated the requirement that American commodities or technological data must not contribute to the economic potential of the country of destination. Moreover, the criterion of *availability* was promulgated as a basis for licensing the export of a commodity or technology to a communist country included on the Commodity Control List. Undoubtedly, an important consideration bearing on this liberalizing trend in export controls was the need to improve our balance of payments.

Originally, the system of controls included all communist countries except Yugoslavia. Nondiscriminatory treatment was denied to other countries of the Soviet bloc on the basis of the 1951 Trade Agreements Extension Act, which required withdrawal of all concessions granted to the Soviet Union and "any nation or area dominated or controlled by the foreign government or foreign organization controlling the world communist movement."<sup>20</sup> Pursuant to the Act, the President suspended trade concessions to all communist countries other than Yugoslavia.<sup>21</sup> Yugoslavia was exempted in spite of her undoubtedly communist government, due to her independent position vis-à-vis the Soviet bloc since the Soviet-Yugoslav dispute in 1948.

American trade relations with the socialist East were further complicated when some socialist countries became members of the GATT.

<sup>18</sup>*Id.*

<sup>19</sup>*Id.* § 2402(1).

<sup>20</sup>Trade Agreements Extension Act of 1951, Pub. L. No. 82-50, ch. 141, § 5, 65 Stat. 73 (1951) (repealed 1962).

<sup>21</sup>Pres. Procl. No. 2935, 3 C.F.R. 121 (1958).

There were no difficulties with Poland and Yugoslavia, members of the GATT since 1967 and 1966 respectively. Nondiscriminatory treatment was already accorded to Yugoslavia, and Most Favored Nation status was extended to Poland in 1969, following the presidential determination that it was no longer dominated or controlled by the Soviet Union.<sup>22</sup> However, when Romania (1971) and Hungary (1973) joined the GATT and Bulgaria was granted observer status (1975), the United States refused to extend MFN treatment on the ground of Article XXXV of the GATT (Avoidance of GATT provisions).<sup>23</sup>

A different case was that of Czechoslovakia, an original member of the GATT (1947) and as such, entitled to MFN treatment. In this instance the denial of MFN treatment to Czechoslovak exports was based on Article XXI (national security grounds) of the GATT.<sup>24</sup>

Two more developments in the area of East-West trade must be described, both of which preceded the enactment of the 1974 Trade Act. The first is the case of the People's Republic of China.<sup>25</sup> Following the communist take-over in 1949, the United States government issued a list of prohibited commodities and effected a partial embargo. In December, 1950 a total prohibition of trade with China was ordered.

On June 10, 1971 controls on a long list of nonstrategic U.S. exports to the People's Republic of China were terminated<sup>26</sup> in accordance with the provisions of the Export Administration Act of 1969, as amended by the Equal Export Opportunity Act of 1972.<sup>27</sup> Though this inaugurated a new era in Sino-American trade relations, the move did not arrive unheralded. It had been preceded by modification of restrictions on the travel of U.S. citizens to China, permission for American tourists to import Chinese goods for noncommercial purposes,<sup>28</sup> and allowance of trade in nonstrategic goods by United States firms abroad, provided that U.S. dollars were not used in the transactions.<sup>29</sup> In addition, nonstrategic foreign-made products incorporating U.S.-produced components and parts had been authorized for sale and shipment to the P.R.C. in April, 1970, subject only to obtaining an export license in each case.<sup>30</sup> The following August, bunkering of free world ships carrying

<sup>22</sup>See generally Bilder, *East-West Trade Boycotts: A Study in Private, Labor Union, State and Local Interference with Foreign Policy*, 118 U. PA. L. REV. 841-938 (1970).

<sup>23</sup>GATT, Oct. 30, 1947, art. XXXV, 61 Stat. (5), (6), T.I.A.S. No. 1700, 55 U.N.T.S. 188.

<sup>24</sup>*Id.* art. XXI; K. DAM, *THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION* 316 (1970); See J. JACKSON, *WORLD TRADE AND THE LAW OF THE GATT* 749-51 (1969).

<sup>25</sup>See Grzybowski, *Control of U.S. Trade with China: An Overview*, 38 LAW & CONTEMP. PROB. 175 (1973).

<sup>26</sup>For a summary of those lists, see 64 DEP'T STATE BULL. 815 (1971); a more detailed listing may be found in 36 Fed. Reg. 11,808 (1971).

<sup>27</sup>50 U.S.C. app. §§ 2401-2413 (1970), as amended by Equal Export Opportunity Act, Pub. L. No. 92-412, 86 Stat. 644 (1972).

<sup>28</sup>34 Fed. Reg. 12,179 (1969).

<sup>29</sup>*Id.*

<sup>30</sup>U.S. OFFICE OF EXPORT CONTROL, DEP'T OF COMMERCE BULL. NO. 16 (1970).

nonstrategic goods to the P.R.C. with petroleum products of non-U.S. origin was permitted.<sup>31</sup> Finally, on April 4, 1971, President Nixon announced further ameliorations in travel and trade restrictions: visas for visitors from China were to be expedited; United States currency controls were to be relaxed to permit the use of dollars in trade with the P.R.C.; American vessels and planes were to be allowed to carry Chinese cargoes between non-Chinese ports; U.S. firms were to be permitted to fuel Chinese ships and aircraft (except those bound to and from North Vietnam, North Korea, or Cuba); and U.S.-owned foreign flag carriers were to be permitted to call at Chinese ports.<sup>32</sup>

The rationale behind these various steps was to modify the regime of China trade regulations in accordance both with changes taking place in other countries and with changing attitudes in the United States itself. The most significant domestic factor was the armistice in South Vietnam which permitted the disengagement and withdrawal of American forces from that country. At least in part, the armistice had to be credited to China's policy of reducing tensions with the United States.

After the June 10, 1971 announcement removed the need for special export licenses for goods and commodities excluded from the list, items included on the list could still be exported under the condition that a special license be obtained in accordance with the export control regulations, subject only to the general provisions safeguarding American national security. Moreover, under the general license provisions, all imports from China were allowed entry into the United States subject only to the usual controls and customs duties relating to goods originating in communist countries. The P.R.C. was also included in the June 10, 1971 termination of the requirement that fifty per cent of wheat, flour, and other grain exports be carried in American bottoms.<sup>33</sup> The June announcement was complemented by that of February 14, 1972, which placed the P.R.C. in country group "Y" on the Commodity Control List of the Department of Commerce, finally elevating China to the same status as accorded the Soviet Union.<sup>34</sup>

The second case is that of the Soviet Union. In 1972 the United States government, following the policy of detente, concluded with the Soviet Union a trade agreement which gave the U.S.S.R. MFN status. The agreement came up for ratification in the course of the debate on the 1974 Trade Act.

<sup>31</sup>Letter from U.S. Dep't of Treasury to interested firm (Aug. 26, 1970).

<sup>32</sup>Statement by the President Announcing Changes in U.S. Trade and Travel Restrictions, 7 WEEKLY COMP. OF PRES. DOC. 628 (April 14, 1971).

<sup>33</sup>See 64 DEP'T STATE BULL. 815 (1971).

<sup>34</sup>37 Fed. Reg. 3511 (1972).



#### IV. The Most Favored Nation [MFN]—Nondiscriminatory Treatment—Clause<sup>35</sup>

The main reason for the change of Congressional attitude toward trade with the socialist East was the awareness that the United States share of that trade was growing at a slower rate than that of the rest of the world. In 1973 it was still below 10% of the total. At the same time Congress felt it unwise to grant MFN status to any socialist country without requiring certain basic preconditions.<sup>36</sup> The following sections discuss those conditions.

##### *a. Freedom of Emigration – The Cases of the Soviet Union and Romania*

Section 402 of the 1974 Trade Act, which originated as the Jackson-Vanik Amendment, requires that the products of a nonmarket country (with the exceptions of Poland and Yugoslavia) be ineligible for nondiscriminatory treatment during any period in which the President determines that the country denies its citizens the right or opportunity to emigrate, or imposes more than nominal charges on emigration. The section also bars such countries from participating in any U.S. program that extends credits, credit guarantees, or investment guarantees (Export-Import Bank and Commodity Credit Corporation).<sup>37</sup>

One way around this difficulty is a finding by the President that such practices have ceased, and in such a case a commercial agreement granting MFN status becomes a possibility (Section 402(a) and (b)). Alternatively, the President may waive by Executive Order the application of Section 402(a) and (b) should a country involved give proper assurances as to its emigration policies, and should the President find that granting of MFN status would promote the objectives of the Act (Section 402(c)). The final decision to extend a waiver belongs to Congress, which must approve any commercial agreements granting MFN status to the country which has properly adjusted its emigration policies (Section 402(d)).

The provisions of Section 402 were directly linked to the Administration's efforts to regularize trade relations with the Soviet Union on the basis of the 1972 Trade Agreement, which, *inter alia*, guaranteed Export-Import Bank credits for U.S. exports. Soviet emigration policies and the harassment of Soviet Jews wishing to emigrate made congressional approval of the Soviet trade agreement unlikely unless proper

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<sup>35</sup>The products granted the MFN status country (nondiscriminatory treatment) are imported into the United States under column 1 duty rates which are the result of the tariff reductions negotiated in trade agreements (bi- and multilateral) with foreign countries. Column 2 are the high 1930 Act tariff rates which are levied on all imports from the non-MFN countries.

<sup>36</sup>S. REP. NO. 93-1298, 93d Cong., 2d Sess., reprinted in [1974] U.S. CODE CONG. & AD. NEWS 7186.

<sup>37</sup>19 U.S.C. § 2432(a) (1970).

guarantees were offered. This led to an exchange of letters between the Secretary of State and Senator Jackson. The Secretary assured Senator Jackson that the Soviet Union had discontinued its restrictive emigration policies and that harassment of persons wishing to emigrate would cease. In his letter Senator Jackson set forth a figure of 60,000 emigrants a year as an acceptable minimum. The Soviet Union refused, however, to tolerate this interference in its internal policies, and did not ratify the Trade Agreement.<sup>38</sup>

In contrast with the Soviet Union, Romania was granted MFN status by presidential determination, because of her emigration policy and her independent foreign and trade policy.<sup>39</sup>

*b. Compensation for Nationalized Property and Defaulted Debts—The Case of Czechoslovakia*

After Czechoslovakia became a communist country, it expropriated the assets of United States nationals. All efforts to obtain adequate compensation, estimated at some 105 million dollars inclusive of interest, were in vain. In retaliation, the United States seized Czechoslovak assets located in the United States. As a member of the Tripartite Commission for the Restitution of Monetary Gold established under the Paris Reparations Commission, it objected to the return of Czechoslovak gold until Czechoslovakia agreed to reimburse American nationals. In July, 1974, the United States and Czechoslovakia initialled a settlement agreement in Prague which provided for the payment by Czechoslovakia of twenty million dollars, to be paid in twelve yearly installments in full satisfaction of American claims. In return, the United States was to release the frozen Czechoslovak assets and gold. Congress refused to accept this arrangement, and stipulated in the Trade Act that the settlement must be renegotiated, suggesting that Czechoslovakia must pay immediately at least the principal amount of sixty-four million dollars.<sup>40</sup>

*c. Settlement of Lend-Lease Claims (Section 404)*

Section 404 imposes a third condition, effective settlement of outstanding debts. Nondiscriminatory treatment granted pursuant to the terms of a bilateral commercial agreement can be continued so long as the nonmarket country is fulfilling its obligations under any Lend-Lease settlement agreement. However, the President is authorized to withdraw nondiscriminatory treatment at any time.<sup>41</sup>

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<sup>38</sup>[1974] U.S. CODE CONG. & AD. NEWS 7186, 7335; see Grzybowski, *supra* note 11.

<sup>39</sup>Cf. Presidential Determination No. 77-14, [1977] U.S. CODE CONG. & AD. NEWS 1495 and Presidential Determination No. 76-17, [1976] U.S. CODE CONG. & AD. NEWS 2159, regarding MFN status for Romania. Prior to this determination, the provisions of subsections (a) and (b) of section 402 (19 U.S.C. § 2432 (1970)) with respect to Romania were waived by President Ford, acting pursuant to subsection (c)(1). Exec. Order No. 11,854, 40 Fed. Reg. 18,391 (1976).

<sup>40</sup>Lillich, *The Gravel Amendment to the Trade Reform Act of 1974: Congress Checkmates a Presidential Lump Sum Agreement*, 69 AM. J. INT'L L. 837 (1975).

<sup>41</sup>See 67 DEP'T STATE BULL. 603 (1972); [1974] U.S. CODE CONG. & AD. NEWS 7186, 7346-48.

Among the nonmarket countries, the Soviet Union has been a major recipient of Lend-Lease assistance. Concurrent with the 1972 Trade Agreement, the Soviet Union agreed to settle American claims in this connection, conditioning the payment of the fourth and all subsequent installments upon the extension of nondiscriminatory treatment to Soviet products. When the ratification of the 1972 Agreement was abandoned, the Lend-Lease settlement also fell through.

*d. Personnel Missing in Action in Southeast Asia (Section 403)*

Nonmarket economy countries must also cooperate with the United States to account for American personnel missing in action in Southeast Asia, to repatriate the living, and to return the remains of the dead. Section 403 of the Act provides that the President may revoke or refuse to extend MFN treatment to any country refusing to cooperate. This section was inserted due to the reluctance of the Vietnamese authorities to assist in locating missing Americans.

## V. The Content of Trade Agreements with Socialist Countries

The bill submitted to Congress provided that nondiscriminatory treatment may be extended to any country which has concluded a bilateral trade agreement with the United States or has become a party to an appropriate multilateral trade agreement to which the United States is also a party. This provision was deleted in the House of Representatives, so the policy that joining the General Agreement on Tariffs and Trade will not automatically give a socialist country MFN status is still in force. In its final form, the Trade Act of 1974 combined authorization to the President to enter into bilateral trade agreements with the nonmarket countries, with an obligation for him to include in such agreements certain stipulations.

The duration of any agreements should not exceed three years. They may be renewable for additional three-year periods, provided that a balance of advantages is maintained. Agreements should provide for termination on national security grounds. They should provide for immediate consultations in case of market disruption due to imports, and should authorize the parties to adopt import restrictions necessary to prevent a market disruption. Agreements should protect the industrial property and copyrights of American nationals, particularly when the other party is not a signatory of the Paris Convention for the Protection of Industrial Property,<sup>42</sup> or the Universal Copyright Convention.<sup>43</sup> The same requirements also apply to earlier commercial agreements coming up for renewal. Agreements should provide for the settlement of commercial differences and disputes, as well as

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<sup>42</sup>July 14, 1967, 21 U.S.T. 1583, T.I.A.S. No. 6923 (as revised 1970).

<sup>43</sup>September 6, 1952, 25 U.S.T. 1341, T.I.A.S. No. 7868 (as revised 1974), 216 U.N.T.S. 133.

facilitate the activities and travel of business and governmental commercial representatives seeking to promote trade. They should also provide for periodic consultation between the parties regarding the operation of the agreement and relevant aspects of relations between the United States and the other party.

## VI. The Safeguards

United States legislators were keenly aware that trade with socialist countries calls for the use of special techniques of control and supervision. As the Senate reports stated, the Senate Finance Committee recognized that a communist country, through its control of the distribution process and the prices at which articles are sold, could disrupt the domestic markets of its trading partners, and thereby injure producers in those countries. In this regard the Committee took into account the problems which East-West trade poses for certain sectors of the American economy. When Canada provided MFN status to communist bloc countries in the 1960's, low-priced East European clock imports increased dramatically, to the point that sales of such imports surpassed those of domestic producers. In the face of such imports, traditional unfair trade remedies, such as those provided under the Anti-Dumping Act, have proved inappropriate or ineffective because of the difficulty of their application to products from state-controlled economies.<sup>44</sup>

In addition, the Committee was concerned that in event of the removal of all barriers to East-West trade, the United States economy might become dependent upon communist suppliers of raw materials essential for American industries, with communist nations displacing traditional suppliers. This fear was particularly strong with regard to defense industries. The Committee was persuaded that "[o]ur traditional dependable suppliers of such materials should be given reasonable assurances that they will be able to compete in our market under fair trade conditions without facing the threat of periodic dumping or other disruptive sales practices."<sup>45</sup> The Committee believed that such a traditional supplier should have the right to petition the International Trade Commission along with American interests, in order to initiate action preventing market disruption.<sup>46</sup> The Act protects the interests of the United States, its manufacturers, and its traditional suppliers by stricter monitoring requirements for trade with communist countries, as well as by changes in market disruption procedures.

Section 410 requires the International Trade Commission to monitor East-West trade, coordinating its information with that ob-

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<sup>44</sup>[1974] U.S. CODE CONG. & AD. NEWS 7186, 7342.

<sup>45</sup>*Id.*

<sup>46</sup>*Id.* at 7343.

tained from the Secretary of Commerce, publishing such data under the East-West Trade Statistics Monitoring System every calendar quarter, and transmitting that information to the East-West Foreign Trade Board. East-West trade data includes information on the effect of communist imports on the production of like, or directly competitive, articles in the United States and on employment within the industry which produces similar articles in the United States.<sup>47</sup>

The East-West Foreign Trade Board was established by the Act to monitor trade transactions in order to insure that East-West trade is in the national interest of the United States. The Board receives information concerning all transactions with socialist countries involving technology vital for the United States, and information concerning any credits, guarantees or insurance provided by a U.S. agency to a communist country amounting to more than five million dollars in any year. The Board submits to the Congress quarterly reports on East-West transactions, including detailed information regarding the progress of trade and the progress of trade agreement negotiations with the communist countries.

Market disruption procedures under Section 406 generally follow procedures designed for similar situations arising in connection with imports from market economy countries (Section 201 of the Trade Act).<sup>48</sup> However, there are some modifications.

Section 406 applies to imports from all communist countries, including Poland and Yugoslavia. Upon a petition by a trade association, firm, union or group of workers, upon a request by the President or the Special Representative for Trade Negotiations, upon resolution by the appropriate House or Senate Committee (Ways and Means, or Finance), upon a petition filed by a traditional supplier (whether an American or foreign-owned corporation),<sup>49</sup> or upon its own motion, the International Trade Commission may launch an investigation to determine whether market disruption exists due to imports from any communist country. In the case of non-communist imports the determination must be made within six months, whereas in the case of a Section 406 investigation, that time limit is reduced to three months. If the Commission reaches a finding of market disruption, its report must recommend a tariff rate increase or an import restriction (quota) to remedy the situation.

There are two principal departures from the general rules of Section 201. In the case of imports from market countries, import restrictions are directed against imports of offensive commodities rather than against

<sup>47</sup>19 U.S.C. § 2440 (1970).

<sup>48</sup>19 U.S.C. § 2251 (Supp. V 1975).

<sup>49</sup>While § 406(a)(1) (codified at 19 U.S.C. § 2436) refers only to domestic industry groups as having the right to petition for an investigation, it can be inferred from the Senate Finance Report (note 46 *supra*) that traditional suppliers may petition even if foreign owned.

imports from offensive countries. In the case of imports from communist countries, import restrictions are directed against the individual exporting country. Moreover, in the case of communist imports the President may take emergency action under Sections 202 and 203 to restrict imports, even before receiving the determination of the International Trade Commission.

In any situation the President may initiate consultation with the communist trade partner to provide for an orderly resolution of the trade distortions, either on petition from the interested party or on his own motion.

The 1974 Trade Act (Title IV) is an interesting piece of legislation. It was adopted not only to provide an orderly basis for East-West economic cooperation, but also to give the Administration the leverage to achieve political objectives. As in previous East-West trade legislation, economic interests were combined with political aims. The spirit of the Act was well summarized in the Senate Finance Committee Report:

The Committee recognizes that segments of the private sector wish the U.S. Government to provide credits, investment guarantees, protection of private property rights, and other conditions before private capital investments are ventured. The Committee believes it is equally reasonable to establish conditions on all basic human rights, including the right to emigrate as well as basic property rights, before extending broad concessions to communist countries.<sup>50</sup>

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<sup>50</sup>[1974] U.S. CODE CONG. & AD. NEWS 7186, 7338.