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Most-Favored-Nation Status of the People's Republic of China

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Summary

Particularly since—and to some extent despite—the Tiananmen Square incident of June 4, 1989, the U.S. Congress has considered two diametrically opposed types of action regarding China's nondiscriminatory, or most-favored-nation (MFN; normal-trade-relations) tariff status in trade with the United States. One has been its total withdrawal, the other—of more recent origin—its extension on a permanent basis. After having been suspended in 1951, China's MFN tariff status with the United States was restored in 1980 conditionally under Title IV of the Trade Act of 1974, including compliance with the Jackson-Vanik freedom-of-emigration amendment, which must be renewed annually, and the existence in force of a bilateral trade agreement between the two countries. This status would be either terminated or changed into a permanent one.

China's loss of MFN tariff status would result principally in the imposition of substantially higher U.S. customs duties on—and in higher, often prohibitive, costs of—over 95% of U.S. imports from China (\$99,580.5 million total in 2000) and a likely cutback in such imports as well as possible retaliatory reduction by China of its imports from the United States. A significant economic disadvantage might result for Hong Kong and Macau, which, despite their political reunification with China, remain separate economic entities with permanent U.S. MFN status.

Sundry legislation introduced in earlier Congresses to withdraw or severely restrict China's MFN status failed to be enacted, in two instances for failure to override the President's veto. In the 105th Congress, legislation was introduced, but not passed, to grant permanent MFN status to China outright or upon its accession to the World Trade Organization. Some of the permanent-MFN bills would have placed additional conditions or restrictions on the grant of the MFN status.

Legislation in the 106th Congress reflected China's prospective accession to the WTO. On one hand, it prohibited U.S. support of China's admission to the WTO without Congress's legislative approval and, moreover, in two instances required the United States to withdraw from the WTO if China was admitted to it without the U.S. support. On the other hand, like in prior years, Congress failed to pass legislation disapproving the President's mid-year renewals of China's Jackson-Vanik waiver and, moreover, enacted legislation (Title I, P.L. 106-286) approving permanent nondiscriminatory status for China upon its accession to the WTO.

On January 30, 1998, the President extended the trade agreement with China for 3 years, and on June 1, 2001, renewed for one year China's Jackson-Vanik waiver and, thereby, its temporary nondiscriminatory status.

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Most-Favored-Nation Status of the People's Republic of China

China's Most-Favored-Nation Status

In the context of the controversy surrounding the renewal of China's most-favored-nation (MFN) status¹ or its permanent grant, it should be pointed out that historically the specific MFN issue involved is that of tariffs rather than of the general MFN treatment as envisaged by the General Agreement on Tariffs and Trade or the bilateral commercial compacts to which the United States is a party. Thus, the MFN status in controversy and, consequently, discussed in this report is limited to nondiscriminatory tariff treatment of China; that is, the application to imports from China of the same concessional customs duty rates agreed to by the United States in reciprocal negotiations with other trading partners.

The United States has applied such MFN tariff treatment as a matter of statutory policy, enacted in 1934, generally to all of its trading partners. This policy was modified with the enactment of Section 5 of the Trade Agreements Extension Act of 1951 (P.L. 82-50), which required the President to suspend MFN tariff treatment of the Soviet Union and all countries of the then Sino-Soviet bloc. Under this statutory mandate, President Truman suspended China's most-favored-nation tariff status as of September 1, 1951. After China's occupation of Tibet, that country's MFN status also was suspended as of July 14, 1952. Whereas earlier the MFN status could, under certain conditions, be restored to a suspended country by presidential action, such restoration could take place, since October 1962, only by specific law, until the Trade Act of 1974, in Title IV, provided specific authority and set out the conditions and the procedure for its temporary restoration to "nonmarket economy" (NME) countries and its subsequent continuation in effect.

Under Title IV, the key elements of the **procedure for temporary restoration of the MFN status** to an NME country² are (1) conclusion of a bilateral trade

¹Because the term "most favored nation" status or treatment, if taken literally, is misleading, it has been replaced in 1998, by law, in existing and future U.S. statutes with that of "normal trade relations (NTR)" or another appropriate term (which also is to be used in any subsequent enactments). The term is still used in this report for reasons of historical continuity and because of its continued universal use in international trade relations and agreements (e.g., the WTO Agreement) as well as in existing U.S. bilateral trade compacts, including the July 1979 and the November 1999 trade agreements with China.

²Although legislation to grant permanent NTR treatment to China has been enacted (Title I, P.L. 106-286), it cannot enter into force in accordance with its own terms before China's accession to the World Trade Organization, possibly sometime in 2001. Until then, China's
(continued...)

agreement containing a reciprocal grant of the MFN status and additional provisions required by law, and approved by the enactment of a joint resolution; and (2) compliance with the freedom-of-emigration requirements (“Jackson-Vanik amendment;” Section 402; 19 U.S.C. 2432). These requirements can be fulfilled either by a presidential determination that the country in question places no obstacles to free emigration of its citizens, or, under specified conditions, by a presidential waiver of such full compliance.

In accordance with this procedure, the President, on October 23, 1979, transmitted to Congress the trade agreement with China, signed on July 7, 1979, its proclamation (Pres. Proc. 4697; 44 F.R. 61161), and the executive order (E.O. 12167; 44 F.R. 61167) granting to China the Jackson-Vanik waiver (H.Doc. 96-209). The agreement was approved by Congress on January 24, 1980 (H.Con.Res. 204, 96th Congress) and entered into force on February 1, 1980 (together with the reciprocal grant of the MFN status, which it contains in addition to all other provisions required by Section 405(b) of the Trade Act of 1974; 19 U.S.C. 2435(b)).

The **continuation in force** of an NME country’s (e.g., China’s) MFN status is contingent on (1) triennial extensions of the underlying trade agreement and (2) continued compliance with the Jackson-Vanik amendment, the latter in the case of some NME countries, including China, by means of annual renewals of the waiver authority and existing waivers.

The agreement, concluded for a 3-year initial term, itself provides for automatic 3-year extensions, but is subject to termination by either party upon notice at least 30 days before the expiration of any 3-year term. The continuation in force of the agreement is also subject to the requirement in Section 405(b)(1)(B) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)(B)), which applies to any trade agreement concluded under Title IV with an NME. Under that provision, the agreement is renewed triennially if a satisfactory balance of concessions has been maintained during the life of the agreement and the President determines “that actual and foreseeable reductions in United States tariff and nontariff barriers ... resulting from multilateral negotiations [which benefit China unilaterally because of its MFN status] are satisfactorily reciprocated by [China].” Such determination has thus far been published six times, most recently as Presidential Determination No. 98-14 of January 30, 1998 (63 F.R. 5857), extending the agreement through January 31, 2001.³

To remain in force, the Jackson-Vanik overall waiver authority as well as the specific China waiver (and China’s most-favored-nation tariff status, which is contingent on it) at present must be renewed annually. The renewal procedure entails (1) a President’s recommendation, which must be made by June 3 of every year, that the existing waiver authority and individual waivers be extended for another 12-month period (through July 2 of the following year). Such extension is (2) automatic upon

²(...continued)

NTR status remains subject to annual extensions under the provisions of Title IV.

³Although no determination has been published renewing the trade agreement with China for the subsequent 3-year period, this has not resulted, in practice, in the termination of the agreement.

the President's recommendation unless it is disapproved by the enactment of a joint resolution (before 1990, approval of a simple resolution).

The language of the resolution is prescribed by law, and a specific fast-track procedure is provided for its consideration. In its basic legislative steps, the resolution must be reported within 30 calendar days (or else the committee considering it may be discharged), may be amended only with respect to the country (or countries) to which it applies, and the debate on it is limited in either chamber to 20 hours, divided equally between those favoring it and those opposing it. The resolution must be approved by August 31. A presidential veto of the resolution must be overridden by the August 31 deadline or within 15 days of session after Congress has received the veto message, whichever is later.⁴ If the resolution is enacted, the waiver and the MFN status cease to be effective on the 61st day after its enactment.

Particularly in recent years, congressional opposition to the continuation in force of China's MFN status has increased on various grounds, mostly unrelated to the freedom-of-emigration considerations. Despite this opposition, legislative action to disapprove its annual extensions has, thus far, been consistently unsuccessful and China's waiver and MFN status have remained in force. Moreover, the controversy in Congress has recently undergone a decided shift of its focus from the issue of whether to continue in force China's MFN status under the provisions of Title IV to the opposite one of granting such status to China unconditionally and permanently.

In a related side issue, the opposition to the application of MFN treatment to imports from China among the public at large has been in some part caused by an obvious misunderstanding of the term "most-favored-nation treatment" itself, taking it in its literal meaning. Congress, primarily in the context of this misunderstanding with respect to China, consequently, enacted legislation (Section 5003 of the Internal Revenue Restructuring and Reform Act of 1998 (P.L. 105-206)) replacing the misleading term in all seven instances of the then existing and in any future statutes with the term "normal trade relations" (NTR) or another appropriate term.⁵

Withdrawing or Restricting China's MFN Status

As long as China remains subject to the Title IV regime (see footnote 2), MFN status could be withdrawn from China, either permanently or temporarily, in one of several ways: (1) by direct legislation enacted through regular legislative process⁶; (2)

⁴For a detailed description of the legislative procedure for enacting a joint resolution of disapproval, see CRS Report 96-490, *Legislative Procedure for Disapproving the Renewal of China's Most-Favored-Nation Status*.

⁵Additional information on this subject is contained in CRS Issue Brief IB93107, *Most-Favored-Nation (Normal-Trade-Relations) Policy of the United States*.

⁶Once China's NTR status is made permanent under the recently enacted legislation (see footnote 2), this would be the only way to restrict, suspend, or revoke it. Such adverse action, however, would have to be taken having regard of the U.S. MFN obligation toward China
(continued...)

by using the specific means provided in the Trade Act of 1974 for denying MFN tariff status to a NME country that had it restored under that law, i.e., by the specific fast-track enactment of a joint resolution disapproving the mid-year annual renewal of the Jackson-Vanik waiver authority with respect to China, if such renewal is recommended by the President; (3) by the President's failure to recommend such renewal with respect to China in the first place, for noncompliance with the Jackson-Vanik requirements; or (4) by direct action by the President suspending or withdrawing China's MFN status. China also could lose its MFN status if the agreement is terminated, upon notice, at the end of a term, or, presumably, if the 3-year extension of the U.S.-China trade agreement does not take place because the President declines or omits to make the required determination.⁷

In past years, Congress has repeatedly and consistently attempted to terminate or restrict China's MFN status by means of resolutions disapproving the annual extension of China's waiver or by specific legislation, or subject its continuation in force to additional statutory conditions, primarily in the area of human rights. None of these measures has become law, although two of them (one in either session of the 102nd Congress), setting additional conditions for the annual extensions of MFN status, came close to being enacted: passed by both houses, they were vetoed by the President and the veto was upheld by the Senate.

A special situation arose in mid-1993, when the President extended China's waiver for another year, but at the same time in Executive Order 12850 also set specific additional conditions for the mid-1994 extension of China's waiver and MFN tariff status. These conditions closely reflected those set in the several versions of the United States-China Act of 1993 (103rd Congress) and, in addition to compliance with the Jackson-Vanik amendment, mandated compliance with the 1992 U.S.-China prison labor agreement and significant progress with respect to China's adherence to the Universal Declaration of Human Rights, release of and accounting for Chinese citizens imprisoned or detained for the nonviolent expression of political and religious beliefs, ensuring humane treatment of prisoners by allowing access to prisons by international humanitarian and human rights organizations, protecting Tibet's religious and cultural heritage, and permitting international radio and TV broadcasts into China. The E.O. also charged U.S. officials to pursue resolutely actions to ensure that China keeps its commitments to follow fair, nondiscriminatory trade practices in dealing with U.S. businesses, and adheres to the Nuclear Non-Proliferation Treaty, the Missile Technology Control Regime guidelines, and other nonproliferation commitments.

Although China denounced the action taken by the President, the principal sponsors in both houses of the legislation to subject the 1994 extension of China's MFN status to additional conditions (Representative Pelosi and Senator Mitchell) expressed their satisfaction with the President's action as representing a sufficient step

⁶(...continued)

under the WTO, since, by then, China would have already become a WTO member, or else permanent NTR status could not have been extended to China by the United States.

⁷In view of the fact that no Presidential determination extending the agreement past January 31, 2001 has been published (see footnote 3) but China's NTR status, in practice, remains in force, it appears that such omission bears no practical consequence.

and stated that further congressional action on their respective bills would be unnecessary. The linking of China's MFN status to overall human rights, however, was abandoned in mid-1994 when President Clinton renewed the China waiver taking into account only its statutory condition, namely, compliance with the freedom-of-emigration requirement of the Jackson-Vanik amendment. Subsequent legislative measures to disapprove the renewal or subject it again to broader human rights conditions failed.

In both sessions of the 104th Congress, the joint resolutions disapproving the presidential extensions of China's MFN status through the renewals of the Jackson-Vanik waiver failed of passage. Likewise, no action was taken on several other bills, such as one nullifying China's waiver and subjecting its restoration to enactment by regular procedure; or another, conditioning the continuation of China's waiver on Taiwan's speedy admission to the World Trade Organization (WTO); or one assessing additional tariffs on imports from China until the President determines that China is fully implementing the agreement on the protection of American intellectual property rights in China.

In the 105th Congress, joint resolutions disapproving the mid-year renewals of the waiver authority were introduced in both sessions but failed to be enacted, allowing the extension of the waiver and China's MFN status to remain in force through July 2, 1999. No specific legislation was introduced to withdraw altogether China's MFN status; such action, however, was proposed with respect to goods produced or exported by the People's Liberation Army or a Chinese military company, but not further considered. China's MFN status also would have been impaired by a bill which required quarterly adjustments of U.S. tariffs on imports from China based on the amount by which China's tariffs on exports from the United States exceed U.S. tariffs on imports from China.

China's MFN status with the United States also could have been adversely affected by legislation, introduced but not passed, requiring prior congressional approval of U.S. support of China's admission to the WTO and the withdrawal of the United States from the WTO if China were to be admitted without U.S. support.

In January 1998, the President also published the determination renewing the 1979 trade agreement with China for three years through January 31, 2001 (see p. 2).

In the 106th Congress, congressional action regarding China's MFN status—other than two failed annual attempts to disapprove the Presidents renewal of China's freedom-of emigration waiver—as in the preceding Congress, reflected to some extent the current action for China's admission to the WTO. Four measures—which would have had only indirect adverse effect on China's NTR status—were introduced (but not passed) to prohibit U.S. support of China's admission unless approved by legislation. Three of the four measures also required the United States to withdraw from the WTO if China were to be admitted without the U.S. support. Lack of U.S. support, however, would have had no practical consequences, since it could not prevent China's admission. United States' withdrawal from the WTO, on the other hand, would have had not only serious consequences for U.S.-China trade relations but even more serious consequences for the United States' leading role in overall international trade relations.

China's admission to the WTO would have played a more direct role the U.S. MFN policy toward China through the "snap-back" provision of the proposed China Market Access and Export Opportunities Act of 1999. Under the provision, current U.S. duty rates on imports from China would be increased to the pre-Uruguay Round levels if China were not according adequate trade benefits to the United States or taking adequate steps toward becoming a WTO member. Lower duty rates would be restored if the relevant contingency were reversed.

Reasons for and Effects of Withdrawing China's MFN Status⁸

In the context of the Jackson-Vanik amendment and Title IV procedure, the sole statutory criterion for continuing in force or withdrawing China's MFN status at present is China's compliance with the freedom-of-emigration requirements—a criterion that in present circumstances no longer represents a practical obstacle to MFN treatment of China by the United States. The advocates of denying MFN status to China, however, have gone beyond the narrow scope of the freedom-of-emigration issue and have based their opposition to continued MFN status on China's violation of human rights in general, its unfair trade practices and obstacles to market access, lack of legal and regulatory transparency, the large and growing U.S. trade deficit with China, China's uncooperative attitude in weapons and nuclear nonproliferation, and, more recently, the alleged illegal Chinese donations to the Democratic National Committee, or nuclear espionage.

Supporters of MFN treatment of China, among them the Administration, have taken the position that the resolution of these issues ought to be pursued through consultations and negotiations in other fora, or by other appropriate means. Particularly the structural trade and economic issues involved, they suggest, would best be resolved in the still ongoing negotiations for China's accession to the World Trade Organization. In the view of the supporters of China's continued MFN status, its withdrawal would be counterproductive since it would increase friction and be less conducive to resolution of any problems through dialogue. It would, they assert, particularly in the human rights area, possibly exacerbate the situation, in addition to the adverse economic consequences it would engender.

Economic consequences would be considerable. Withdrawal of China's MFN status would result, in the first instance, in significant duty increases on about 95% of U.S. imports from China, totaling \$99,580.5 million in 2000. The cost effect of the increases would vary among the various product groups, but would on the whole be substantial.

⁸Since the enactment of permanent nondiscriminatory treatment for China and consequent nonapplication of Title IV to China have not yet been implemented, this and some subsequent section of the report are presented not only for their historical interest but also because of their continued applicability.

Table 1 illustrates how the withdrawal of the MFN tariff status would change the duty rates assessable in 2001 on 15 major products or product groups imported from China.

Table 1. Illustrative MFN and Full-Duty Rates Applicable in 2001 to Major Imports from China

	MFN Rate	Full Rate
Toys (all kinds)	Free	70%
Plastic or rubber footwear	6%	35%
Women's low footwear (rubber sole/leather uppers)	10%	20%
Men's high footwear (rubber sole/leather uppers)	8.5%	20%
ADP machine parts	Free	35%
Leather apparel	6%	35%
ADP printed circuit assemblies	Free	35%
Men's high leather shoes	8.5%	20%
Cordless telephones	Free	35%
ADP disk drive units	Free	35%
Sweaters, other than cotton, wool, or manmade material	6%	60%
Artificial flowers	9%	71.5%
Sundry plastic articles	5.3%	80%
Women's silk blouses	7.1%	65%
Christmas tree light sets	8%	50%

In view of the overall substantial differences between the concessional (MFN) and full rates of duty, it is clear that the termination of China's MFN status would result in substantial increases in the cost of imports from China. The average trade-weighted MFN duty rate on all 2000 imports from China, dutiable as well as nondutiable, was 3.8% (on dutiable alone, 7.1%). Without MFN treatment, and assuming no change in the volume of imports, this rate would have been at about the 45% level. An even larger gap between the MFN and full-duty treatment would occur in the top categories of U.S. imports from China, primarily because a substantial share of them are duty free under MFN treatment but would be subject to high duty rates without it.

On the basis of our recent survey of imports under the individual tariff items each of whose imports in 2000 exceeded \$100 million (212 items in all) and which together accounted for \$66.7 billion (67.0%) of all U.S. imports from China in that year, the termination of China's MFN status would increase the importers' overall cost of those products by over one-third, mostly in the range between 25% and 65%.

Compared to similar data for earlier years, these figures indicate a larger concentration of China's exports to the United States in duty-free products or those dutiable at low rates (up to 10% ad valorem). Imports free of duty under the NTR

tariff treatment accounted for 87 out of 212 included tariff items, at a total value of \$36.3 billion (36.5% of total U.S. imports from China), and imports dutied at rates of up to 10% (mostly 5%) ad valorem accounted for 104 tariff items, totaling \$25.9 billion (26.0% of total imports) (see **Table 2**). The data also suggest an increasing—quite probably by design—intensification of China’s exports to the United States in the product lines subject to zero or low-rate duty rates.

As a consequence of the changes brought about by the termination of China’s NTR status, the trade pattern of articles now imported from China would be likely to change substantially. Much of their sourcing would be likely to shift to suppliers in other countries or to domestic suppliers. This restructuring also could and often would result in higher costs to the importers and consumers of the articles involved. This, in part because those low-priced imports from China that would still take place would generally be subject to higher, in many instances much higher, non-NTR duties, and in part because the cost of imports from alternative sources at NTR duty rates would most likely be higher than present imports of comparable goods from China due to their higher product prices.

Although some of the increases in importers’ costs would likely be in part absorbed in the subsequent chain of distribution, relative cost increases at the retail level would still be high, particularly on low-margin, moderately priced consumer goods (certain clothing, footwear, household electrical and electronic products, toys, etc.). China is now a substantial supplier of such goods, and some of them may, at least temporarily, even become priced out of the U.S. market. Because of the type of the articles involved, the resulting increased costs and reduced availability would affect disproportionately lower-income U.S. consumers.

On the Chinese side, such changes would obviously have an adverse effect by reducing significantly the U.S. demand for such imports from China. The size of this reduction and the impact of its adverse effect on China’s economy would depend on a number of factors, but, in the opinion of several China trade experts, would be substantial. It would be, it is claimed, particularly damaging to the economy of China’s southern provinces (Fujian and Guangdong), which are most dependent on exports and where much of China’s exports originate. Indirectly, it would also adversely affect Hong Kong and the economic benefits it derives from being the port of transit for close to 60% of China’s exports to the United States, and whose businesses also have substantial manufacturing interests in the neighboring southern China: hence, Hong Kong’s general opposition to the withdrawal of China’s MFN status. Hong Kong’s reversion to China’s sovereignty as a Special Administrative Region has not changed its status as a separate trade and customs entity nor the role it has played in the past in China’s foreign trade and other economic relations. A withdrawal of China’s MFN status would also have adverse consequences for other major investors in South China: Taiwan, Japan, and the United States.

**Table 2. Incidence of Changes in Duty Rates
Due to China's MFN Status**

(imports in 2000 under 212 tariff items, valued each \$100 million and over;
by 10% duty-rate brackets; values in millions of dollars,
and number of tariff items in each category)

Change To\ From	Free	Over 0% to 10%	Over 10% to 20%	Over 20% to 30%	Over 30% to 40%	Over 40% to 50%	Total
Free	\$726.2 (no change) 5	– –	– –	– –	– –	– –	\$726.2 5
Over 0% to 10%	\$104.1 1	\$223.8 2	– –	– –	– –	– –	\$327.9 3
Over 10% to 20%	\$1,696.1 5	\$3,024.7 4	– –	– –	– –	– –	\$4,720.8 9
Over 20% to 30%	\$1,036.8 4	\$1,651.4 9	\$660.6 2	– –	– –	– –	\$3,348.8 15
Over 30% to 40%	\$23,025.6 57	\$14,189.3 59	\$902.0 3	– –	– –	– –	\$38,117.0 119
Over 40% to 50%	\$2,018.6 6	\$2,802.0 11	\$1,016.2 5	– –	– –	– –	\$5,836.8 22
Over 50% to 60%	– –	\$1,204.1 5	– –	– –	– –	– –	\$1,204.1 5
Over 60% to 70%	\$7,460.0 8	\$785.1 5	\$371.0 2	– –	\$410.8 1	– –	\$9,027.0 16
Over 70% to 80%	– –	\$1,893.8 8	\$117.9 1	– –	– –	– –	\$2,011.7 9
Over 80% to 90%	\$267.1 1	\$128.9 1	\$422.9 3	\$210.9 2	\$193.1 1	– –	\$1,223.0 8
Over 90% to 100%	– –	– –	– –	– –	– –	– –	– –
Over 100% to 110%	– –	– –	\$176.8 1	– –	– –	– –	\$176.8 1
Total	\$36,334.5 87	\$25,903.1 104	\$3,667.4 17	\$210.9 2	\$604.0 2	– –	\$66,720.0 212

Note: Due to rounding, detail may not add to total.

Depending on whether and, if so, in what way and to what extent China would retaliate against imports from the United States (by increasing its tariffs to non-MFN levels, or taking other import-restrictive measures), the annual loss of U.S. exports to China could be significant, most likely affecting U.S. exports of grain, power generating machinery, aircraft, and fertilizer products. Also likely to be adversely affected would be overall U.S. economic relations with China, particularly U.S. investment and establishment of American businesses.

International Contractual Implications

Denial of China's MFN status would have to be implemented also with having regard of two relevant provisions of the 1979 U.S.-China trade agreement, still in force, addressing specifically the discontinuance of the agreement or of any of its provisions. In its automatic 3-year extension provision (Article X.2), the agreement allows for its termination if either party to it "notifies the other of its intent to terminate this Agreement at least thirty (30) days before the end of a term." The agreement also provides (in Article X.3) that "if either Contracting Party does not have domestic legal authority to carry out its obligations under this Agreement, either Contracting Party may suspend application of this Agreement, or, with the agreement of the other Contracting Party, any part of this Agreement." This provision appears to be applicable with respect to MFN treatment in the event that the waiver authority is withdrawn under the Jackson-Vanik amendment or the treatment itself is terminated by a specific newly enacted statute.

A more generally applicable provision (Article IX), which asserts "the right of either Contracting Party to take any action for the protection of its security interests," also might conceivably, if circumstances warranted, be used to suspend the MFN treatment.

An additional element to be considered in the context of U.S. MFN policy toward China is China's almost completed—if somewhat delayed—procedure for membership in the World Trade Organization⁹ and the obligation of WTO members (which include the United States) to accord to each other unconditional MFN treatment in its all-encompassing meaning (i.e., not only with regard to tariffs). This obligation is contained in Article I of the General Agreement on Tariffs and Trade 1994 (GATT 1994), one of the many compacts resulting from the Uruguay Round of multilateral trade negotiations that constitute the Agreement Establishing the World Trade Organization.

China's accession to the WTO, the procedure for which was initiated in 1986, is a goal that China as well as many other WTO members, including the United States, are earnestly pursuing. China's 6-year-old negotiations of a bilateral trade agreement with the United States, the provisions of which make part of China's protocol of accession to the WTO, intensified in the several months prior to the early April 1999 visit to the United States by China's premier, Zhu Rongji, and resulted in a partial agreement on market access for agricultural and industrial products and various services. The negotiations to resolve several other differences between the two countries, which the United States considered of essence for China's participation in the WTO, however, were temporarily suspended by China in the wake of the accidental bombing by NATO aircraft of China's embassy in Belgrade. The bilateral negotiations were resumed and were successfully concluded with the signing of a

⁹For detailed specific aspects of this issue, see CRS Report RL30175, *China's Accession to the World Trade Organization: Legal Issues*; and CRS memorandum *Questions Regarding Accession of the People's Republic of China to the World Trade Organization*, by Jeanne J. Grimm, dated March 23, 2000 (released with client consent, and available from the American Law Division, CRS).

voluminous and comprehensive bilateral agreement on November 15, 1999. There are, however, still some unresolved issues of interest to the United States being negotiated multilaterally with the WTO.

China's accession has also become an issue of direct interest to Congress through the introduction in the 105th and 106th Congresses of several measures requiring statutory approval of the U.S. support of such accession (see p. 5).

When China accedes to the WTO, the continuation of the present U.S. policy (which conditions China's MFN treatment by the United States on compliance with the requirements of Title IV) or, more drastically, an imposition of additional restrictions on, or withdrawal of, MFN status from China would constitute a violation of the U.S. obligations under the GATT 1994 Article I, calling for "general most-favored-nation treatment" of all GATT signatories/WTO members. In such a case, China would—after its accession—have cause to submit the issue for resolution to the WTO Dispute Settlement Body.

One way for the United States to avoid such violation would be by taking recourse to WTO Article XIII. This article provides for nonapplication of all WTO multilateral agreements between any current and a newly acceding member if, before the accession agreement of the new member is approved by the WTO General Council, either country does not consent to such application.¹⁰ If the United States and China then wished to apply reciprocally any other provisions of the WTO package of agreements (except permanent MFN treatment), they could technically do so by amending the existing bilateral agreement or renegotiating it by including provisions for such application.

Such course of action, however, does not appear likely in practice under present circumstances, particularly in view of the fact that a comprehensive agreement, the benefits of which weigh heavily to the benefit of the United States, has already been reached between the United States and China as part of China's accession to the WTO. Recourse to WTO Article XIII would also put this agreement on hold until the United States were able to apply to China the WTO agreement in its entirety, essentially by extending to it unconditional and permanent MFN status, a *quid pro quo* on which China would undoubtedly insist.¹¹

¹⁰Such action was taken by the United States at the time when, in similar circumstances, Hungary, Romania, Mongolia, Kyrgyzstan, and Georgia were, in recent years, joining the GATT or WTO. The invocation of Article XIII with respect to the all five countries was rescinded upon their being extended permanent MFN status by the United States. The invocation of Article XIII by the United States with respect to China would result in reciprocal nonapplication of the WTO agreements (including the substantial benefits of the U.S.-China 1999 bilateral agreement—a point in favor stressed in the congressional debate on approving China's permanent MFN status). The lack of China's permanent U.S. MFN status, however, would not prevent, in the context of WTO rules, the United States from voting in favor of China's admission to the WTO, nor, on the other hand, would lack of U.S. support by itself prevent China's admission to the WTO.

¹¹As long as the 1979 trade agreement with China remains in force, however, the United States
(continued...)

Granting to China Permanent MFN Status¹²

Due to China's progress in its quest for accession to the WTO, the focus of congressional China MFN debate has in recent years shifted from the issue of annual renewals of China's status under a Jackson-Vanik waiver to one of granting China permanent unconditional MFN/NTR status. The shift has been brought about by the likelihood that China will soon become a WTO member, and such membership will require both countries to apply to each other permanent most-favored-nation treatment. More crucially, denial of permanent NTR treatment on the part of the United States by continuing the practice of renewing it annually would make impossible the reciprocal application of the WTO Agreement as well as of the comprehensive U.S.-China bilateral agreement, which was signed on November 15, 1999, as part of the process of China's accession to the WTO (see preceding section).

Although attempts to grant permanent MFN/NTR status to China—whether unconditionally or tied to China's membership in the WTO—had been made already in the 105th Congress, the action came to fruition in the 106th Congress.

Draft legislation authorizing the President to terminate the application of Title IV of the Trade Act of 1974 (including, principally, the Jackson-Vanik amendment) and by proclamation extend permanent nondiscriminatory treatment to China was transmitted by the White House to Congress in a Presidential message¹³ on March 8, 2000. It was introduced on March 23 jointly by Senators Roth and Moynihan as S. 2277 and referred to the Committee on Finance, and on May 15 by Representative Archer (by request; H.R. 4444) and referred to the Committee on Ways and Means. In addition to the language of comparable legislation enacted earlier to grant permanent nondiscriminatory status to several other NME countries in similar situations, the two bills required the President to transmit to Congress, before making the determination terminating the application of Title IV to China, a report certifying “that the terms and conditions for China's accession to the WTO are at least equivalent to those agreed” in the U.S.-China bilateral agreement. The bills also set as the effective date of the legislation a date “no earlier than the effective date of China's accession to the WTO,” thereby equating the extension of permanent MFN

¹¹(...continued)

can benefit from a limited number of those types of concessions that have been granted by China to other countries in bilateral agreements or included in the accession protocol as part of China's accession to the WTO for which the 1979 agreement specifically requires reciprocal MFN application. While China's tariff concessions to other WTO members would apply to China's imports from the United States on MFN basis, the United States would, however, be precluded from access to two key elements of the WTO agreement: the WTO dispute settlement mechanism, and the agreement on services.

¹²This action does not apply to China's Special Administrative Regions of Hong Kong and Macau, to which MFN treatment by the United States is due individually since they already were members of the WTO as separate customs territories before their respective reversions to China.

¹³U.S. President (Clinton, 1993-). *Permanent normal trade relations for China*; message from the President of the United States... Washington, U.S. Govt. Print. Off., 2000 3 p. (106th Congress, 2d session. House Document 106-207). Message dated March 8, 2000.

status to China under domestic law with the United States' identical international obligation under the WTO.

H.R. 4444 was amended and reported favorably by the House Ways and Means Committee with the addition of provisions detailing criteria and procedures for product-specific remedial action—to remain in force for 12 years—against disruption of the U.S. market by surges in imports from China. Anti-surge provisions would apply regardless of whether such surges are autonomous or caused by diversion of Chinese exports from third countries to the United States because of import-safeguard action by those countries against disruptive surges in their imports from China.¹⁴ These provisions, a bipartisan proposal by Representatives Levin and Bereuter and supported by the Administration, address the concern regarding possible injurious consequences of China's permanent NTR status. They are the U.S. domestic enactment of the special anti-surge mechanism negotiated as part of the U.S.-China bilateral agreement, but made part of China's WTO accession protocol and applicable on an MFN basis to any WTO member country's imports from China.

H.R. 4444 was further amended by the Rules Committee¹⁵ with the addition of provisions establishing a Congressional-Executive Commission to monitor and report on China's human rights and compliance with WTO commitments, and a task force to monitor and enforce China's compliance with the U.S. anti-slave-labor statute, establishing programs to develop China's commercial and labor law, and expressing the sense of Congress that China's and Taiwan's accession to the WTO be approved at the same time. The Rules Committee version was passed by the House on May 24, 2000, in a roll-call vote of 237 to 197.

S. 2277 was reported favorably without amendment on May 25, 2000,¹⁶ but not further considered. Instead, the Senate, on September 7, 2000, began considering H.R. 4444. Due to a large number of amendments—none of which was agreed to—the debate on the measure was protracted and the vote on it was delayed to September 19, when it was passed by a vote of 83 to 15 and on October 10, 2000 signed by the President (Title I, P.L. 106-286).

Even though legislation approving China's permanent normal trade relations (PNTR) status has been enacted, PNTR treatment itself—in accordance with the

¹⁴U.S. Congress. House. Committee on Ways and Means. *Permanent normal trade relations with the People's Republic of China*. Report together with additional views (to accompany H.R. 4444). Washington, U.S. Govt. Print. Off., May 22, 2000. 37 p. (106th Congress, 2d Session. H.Rept. 106-632).

¹⁵U.S. Congress. House. Committee on Rules. *Providing for the further consideration of H.R. 4444, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China*. Report (to accompany H.Res. 510). Washington, U.S. Govt. Print. Off., May 23, 2000. 29 p. (106th Congress, 2d Session. H.Rept. 106-636).

¹⁶U.S. Congress. Senate. Committee on Finance. *Termination of the application of Title IV of the Trade Act of 1974 with respect to the People's Republic of China*. Report (to accompany S. 2277). Washington, U.S. Govt. Print. Off., May 25, 2000. 10 p. (106th Congress, 2d Session. S.Rept. 106-305).

legislation—will not enter into force until China accedes to the WTO. The accession becomes effective 30 days after China ratifies the protocol of accession—now still being negotiated—and the decision by the WTO General Council (foreseeably sometime in 2001) approving China's accession.

Action during the 107th Congress

China's favorable MFN/NTR situation after the legislative approval of the U.S.-China bilateral trade agreement suffered a setback in early April 2001 as a result of the negative reaction in Congress as well as in the general public, triggered by China's intransigence following the April 1 collision, over international waters off the coast of South China, of a U.S. Navy reconnaissance plane and a Chinese fighter. Legislative reaction in Congress to China's insistence that the United States apologize for the accident was swift: on April 4, Representative Hunter and a large number of cosponsors introduced H.R. 1467 to repeal nondiscriminatory trade treatment of China, whether temporary or permanent, and prohibit any subsequent extension of it. On the same day, a somewhat less radical measure (H.R. 1497) was introduced by Rep. Murtha and seven cosponsors, repealing the already enacted permanent NTR status to China, but leaving the Title IV authority for temporary NTR status unchanged with respect to China. Both bills were referred to the Ways and Means Committee.¹⁷

Despite this opposition in Congress, the President, on June 1, 2001, renewed China's Jackson-Vanik waiver for one year (Presidential Determination 2000-16; 66 FR 30631). Unless disapproved by the enactment of a joint resolution, the extension of the waiver will continue China's NTR status in force for another year. This temporary extension is necessary because China's permanent NTR, enacted by P.L. 106-286, will enter into force only after China's accession to the WTO. H.J.Res. 50 to disapprove the extension of China's Jackson-Vanik waiver was introduced June 5, 2001, by Rep. Bereuter.

¹⁷Enactment of either bill would create for the United States difficulties with the World Trade Organization, as described in the section in International Contractual Implications