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## **Normal-Trade-Relations (Most-Favored-Nation) Policy of the United States**

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## Summary

In international trade, the term most-favored-nation (MFN) treatment has a meaning at variance with what it appears to mean: the expression means equal — rather than exclusively favorable — treatment and is often used interchangeably with “nondiscriminatory.” To make this distinction clearer and avoid a possibly misleading interpretation of the most-favored-nation term, legislation was enacted in 1998 to replace it in U.S. law with the term “normal trade relations,” or NTR. In this report, both terms are used interchangeably with “nondiscriminatory.” The United States accords general MFN treatment as a matter of international obligation as well statutory policy to all trading partners; however, MFN tariff treatment of several countries has been suspended under specific legislation. Virtually all such suspensions, initially applied to 21 countries or political entities, took place under the mandate of the Trade Agreements Extension Act of 1951, and two more under country-specific legislation. MFN tariff treatment of countries suspended under the 1951 law can be restored and maintained in effect for one-year periods by using the procedure provided under Title IV of the Trade Act of 1974 for such restoration to “nonmarket economy” (NME) countries. Under this procedure, an NME country needs to conclude with the United States a trade agreement containing a reciprocal MFN clause, and be in compliance with the criteria of the Jackson-Vanik (J-V) freedom-of-emigration provision of that act. The two countries whose MFN status was suspended by country-specific legislation could — and did — have it restored by Presidential action under conditions specified in the suspending law.

Trade agreements with NME countries must be approved by joint resolution, and are triennially self-renewable, but their renewal is also subject to Presidential confirmation. To maintain in force the compliance with the J-V criteria (and the MFN status), such compliance must be either determined semiannually, or waived annually, by the Secretary of State, and such determinations or waivers are annually subject to possible disapproval by joint resolution. Repeated past legislative action to disapprove some waivers, particularly those for China, has been unsuccessful and NTR treatment contingent on a waiver has invariably remained in effect. Permanent restoration of NTR status of any country generally requires specific legislation.

Of the 29 countries, today’s successors of countries or areas originally subject to the 1951 suspension, 15 had their permanent NTR status restored by specific legislation (five directly and ten after a period of conditional restoration under the Jackson-Vanik amendment), one (Poland) by the President under then existing statutory authority, and one (East Germany) administratively through unification with West Germany. The status of seven of them is still temporary, subject to the determination of full-compliance with the Jackson-Vanik amendment, and of three of them under the Jackson-Vanik waiver provision. Two countries (Cuba, and North Korea) are denied NTR status altogether. The NTR status of two countries, suspended by individual legislation, has been restored permanently by Presidential action as authorized by the suspending legislation.

This report will be updated as warranted.

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# Normal-Trade-Relations (Most-Favored-Nation) Policy of the United States

## What is Normal-Trade-Relations (Most-Favored-Nation) Treatment?

In international trade, the expression “most-favored-nation,” usually abbreviated “MFN,” status (or treatment) has a specific meaning quite different from what it appears to mean. While suggesting special and exclusive privileges granted to one country, it means in reality equal treatment of all countries granted the MFN treatment. Defined in a more specific detail in Article I of the General Agreements on Tariffs and Trade (GATT) 1994, an integral part of the World Trade Organization Agreement, the term denotes the reciprocal extension of any concessions, privileges, or immunities granted, or yet to be granted, by a country in a trade agreement (or in some other way) to one country which is, or would be, the “most favored” in this respect to all countries to which it accords MFN treatment. As a consequence, all countries to which a country extends MFN treatment are, or would be, treated by the extending country equally or in a “nondiscriminatory” fashion.

The understandable misinterpretation of the most-favored-nation term in its literal meaning, particularly in the context of U.S. trade policy of the mid-1990s toward China, gave rise to legislation<sup>1</sup> to replace the often misleading term “most-favored-nation” treatment in the seven instances in the existing and in all future U.S. legislation with the term “normal trade relations” (NTR) or another appropriate expression. The MFN term, however, has remained universally in use in international trade relations, including trade agreements to which the United States is party. Because of this fact and for reasons of historical continuity both terms (MFN and NTR) are used in this report with the identical meaning and also interchangeably with the term “nondiscriminatory,” a term also often used in U.S. trade legislation.

In practice, the principal benefit a country gains from being accorded MFN status by another country is that the latter’s imports from the former are dutied at concessional rates (often referred to as “MFN” rates, and listed in the U.S. tariff schedules as “General”) rather than full rates. Thus, the extension of MFN treatment to a country can often mean a significantly lower cost and, hence, greater competitiveness of its products in the extending country’s markets than would otherwise be the case. In this report, the MFN (NTR) treatment is discussed in the specific context of tariffs, because of the origins and historical development of the

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<sup>1</sup> See pp. 7 and 8.

concept in the U.S. law and practice, particularly the denial or restoration of such treatment to nonmarket economy countries

## Evolution of U.S. Most-Favored-Nation Policy

There are three basic, often overlapping, ways in which the United States accords general MFN treatment to its trading partners. One is by means of a bilateral compact (e.g., a “friendship, commerce, and navigation” or similar treaty, or an executive trade agreement) in which MFN status is accorded reciprocally. Another, much broader in its reach, is through being a member of the World Trade Organization (WTO), which, as a rule, carries with it the obligation of according MFN treatment to all other members.

In addition, the United States specifically accords to all foreign countries any concession on tariffs or other import restrictions agreed to in reciprocal negotiations with any trading partner by its own law, first enacted in 1934 and now contained in Section 126 of the Trade Act of 1974 (19 U.S.C. 2136). U.S. legislation provides no specific procedure for extending MFN status to a country (except in the case of restoration of the status to “nonmarket economy” countries discussed below) nor is there an official list of countries with MFN status. All countries other than those to which MFN treatment is specifically denied by law (as listed in General Note 3(b) of the Harmonized Tariff Schedule of the United States) have MFN status.

The policy of general application of MFN treatment was modified when the President, in 1951 and 1952, suspended<sup>2</sup> the application of MFN tariff rates to the Soviet Union and to all countries or areas then under the control of international communism (in practice, the suspension applied to all countries of the then Sino-Soviet bloc but not to Yugoslavia). This action resulted in the increase of customs duties assessed on the U.S. imports from the countries involved from the concessional levels resulting from trade agreements with third countries to considerably higher levels as enacted by the highly protectionist Tariff Act of 1930.

The Communist countries and areas initially denied MFN tariff treatment under Section 5 were: Albania, Bulgaria, China (any part under Communist domination or control), Czechoslovakia, Estonia, Germany (Soviet Zone and Soviet Sector of Berlin), Hungary, Indochina (any part of Cambodia, Laos, or Vietnam under Communist domination or control), Korea (any part under Communist domination or control), Kurile Islands, Latvia, Lithuania, Outer Mongolia, Poland and areas under Polish domination or control, Rumania, Southern Sakhalin Island, Soviet Union, Tanna Tuva, and Tibet.<sup>3</sup>

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<sup>2</sup> The suspension was required by Section 5 of the Trade Agreements Extension Act of 1951 (65 Stat. 73) and implemented by Presidential Proclamation 2935 (16 F.R. 2635) and subsequent Trade Agreement Letters, applying it to individual countries.

<sup>3</sup> U.S. Congress. Senate. Committee on Finance. Trade Reform Act of 1974; report together with additional views on H.R. 10710 ... S.Rept. 93-1298. Washington, U.S. Govt. Print. Off., November 26, 1974, p. 201.

Subsequently, Poland's MFN tariff status was restored by the President in December 1960, while Cuba's was added to Section 5 suspensions by law in May 1962. Also in 1962, a list of "Communist countries" (all "Section 5" countries except Poland), to which MFN tariff status was being currently denied, was included in the newly revised Tariff Schedules of the United States, enacted by the Tariff Classification Act of 1962, and thereby the denial of MFN treatment to individual countries became part of the U.S. law rather than of implementing regulations as theretofore.

Section 231 of the Trade Expansion Act of 1962 (P.L. 87-794; 76 Stat. 876) applied the Section 5 suspension to "any country or area dominated by Communism" and thereby placed in jeopardy MFN tariff status of Yugoslavia as well as of Poland. The implementation of this directive was delayed and the law was later amended by allowing any country with MFN status at the time of its enactment (December 16, 1963) to retain it if the President determines it to be in the national interest. Such determination was made on March 26, 1964, for both countries (29 F.R. 4851 or 4913).

## **Procedure for Restoring NTR Treatment to Nonmarket Economy Countries**

The Trade Expansion Act of 1962 also made the restoration of MFN tariff status to a country subject to Section 5 suspension possible only by legislation. While restoration of **permanent NTR treatment** can take place only through legislation enacted under general legislative procedure, NTR treatment as such can be restored to a "nonmarket economy" (NME) country subject to Section 5 suspension on a *temporary* basis by a specific procedure provided in Title IV of the Trade Act of 1974. While Section 401 of the act requires the continuation in force of the then existing suspensions of MFN tariff status, it also, in other provisions of its Title IV, authorizes the President to restore "nondiscriminatory" status to a nonmarket economy country and maintain it in effect on a temporary basis by a specific procedure.

The key elements of the procedure for **temporary restoration** of the MFN status to an NME country are (1) conclusion of a bilateral trade agreement, containing a reciprocal grant of the MFN status and additional provisions required by law (Section 405, Trade Act of 1974; 19 U.S.C. 2435), and approved by the enactment of a joint resolution<sup>4</sup> considered under a specific fast-track procedure set out in Section 151 of the Trade Act of 1974 (19 U.S.C. 2191); and (2) compliance with the freedom-of-emigration requirements ("Jackson-Vanik amendment;" Section 402; 19 U.S.C. 2432). The latter requirement can be fulfilled either by a presidential

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<sup>4</sup> Originally, approval of a trade agreement concluded with an NME country was to be effected by the adoption of a concurrent resolution. The type of approving resolution was changed — with some delay — to joint by Section 132(b)(2)(C) of P.L. 101-382 of August 20, 1990, as a precautionary consequence of the June 23, 1982, decision of the U.S. Supreme Court in *U.S. Immigration and Naturalization Service v. Chadha*, which found legislative vetoes by means of a one-house resolution unconstitutional.

report to Congress that the country is not in violation of (in effect, is in full compliance with) the freedom-of-emigration criteria of the statute, or by a presidential waiver of such compliance under specified conditions.

Neither the initial presidential determination of full compliance with the Jackson-Vanik amendment requirements nor his initial waiver of full compliance with them requires positive congressional *approval*. However, the initial presidential determination of full compliance with such requirements (but not the initial waiver) is subject to congressional *disapproval* by a joint resolution<sup>5</sup> of either house, enacted under a specific fast-track procedure, laid out in Section 152 of the Trade Act of 1974 (19 U.S.C. 2432).

Following the main steps of the procedure, the disapproval resolution, whose language is prescribed by law, is referred, respectively, to the House Ways and Means Committee or the Senate Finance Committee, and must be reported within 30 days of session, or else the committee considering it is subject to a discharge motion, the resolution may be amended only with respect to its country applicability, and the debate on the resolution and any procedural motions is subject to limits. The resolution must be adopted within 90 days of session after the date the presidential determination is delivered to Congress, and enters into force — thereby, in effect, denying the nondiscriminatory treatment and other trade benefits to which it applies — on the 61<sup>st</sup> day after its enactment. If the President vetoes the resolution, the veto must be overridden within the 90 days or within 15 days of session after the receipt of the veto message, whichever is later. The date of the override is considered as the date of enactment.

After the enactment of legislation approving the bilateral agreement, restorations of nondiscriminatory treatment are implemented by presidential proclamation, which, in the case of permanent restorations, usually sets the date of their entry into force, whereas temporary restorations enter into force on the date the exchange of notices of acceptance of the agreement by the two countries takes place.

The **continuation in force** of an NME country's temporary MFN status is contingent on (1) automatic triennial extensions of the underlying trade agreement and (2) periodic renewal of the authority of the Jackson-Vanik amendment.

The agreement, usually concluded for a three-year initial term, itself provides for automatic three-year extensions (which do not require congressional approving action), but is subject to termination by either party upon notice at least 30 days before the expiration of any three-year term. The continuation in force of the agreement is also subject to the requirement of Section 405(b)(1)(B) of the Trade Act of 1974 (19 U.S.C. 2435(b)(1)(B)) under which any trade agreement concluded under Title IV 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 the country in question unilaterally

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<sup>5</sup> Before the U.S. Supreme Court decision in *Chadha* (see Footnote 4), this disapproval procedure involved a simple resolution.

because of its MFN status] are satisfactorily reciprocated by the other party to the bilateral agreement.”

Periodic renewal of the Jackson-Vanik amendment authority by the President must take place: (1) in the case of full compliance with the requirements of the amendment, by semiannual reports (by June 30 and December 31) by the President to Congress that the country continues to be, in effect, in full compliance with the freedom-of-emigration requirements of the statute; and (2) in the case of waivers, by a Presidential recommendation, which must be made by June 3 of every year, that the overall waiver authority and the existing individual country waivers be extended for another 12-month period (through July 2 of the following year).

In either case, the renewal is automatic unless the year-end (but not the mid-year) report of full compliance or the annual recommendation of waiver renewal is disapproved by the enactment of a joint resolution, considered under specific fast-track procedures: that under Section 152 (see previous page) for year-end renewals of the determination of full compliance, and a separate one, under Section 153 of the Trade Act of 1974 (19 U.S.C. 2433), for mid-year renewals of the waiver authority. The procedure under Section 153 differs, in its major steps, from that involving year-end determinations of full compliance only in that the deadline for the committee report is of 30 *calendar* days, and that the resolution must be adopted and transmitted to the President by August 31 of the current year.

## **NTR Action Through the 105<sup>th</sup> Congress**

Shortly after its enactment (January 3, 1975), Title IV of the Trade Act of 1974 was used to extend MFN treatment on an annually renewable basis under the waiver provision to Romania (August 1975), followed by Hungary (July 1978), China (including Tibet) (February 1980), and Czechoslovakia (November 1990). Romania, however, as of July 1988, renounced the continuation of its MFN tariff status subject to the conditions of Title IV.

With the legislation for conditional restoration of nondiscriminatory tariff treatment to NME countries already on the books, Poland’s MFN tariff status was suspended again in October 1982 after the Polish martial-law government increased its repressive measures, but was restored in February 1987, after most such measures had been repealed.<sup>6</sup> In January 1986, Afghanistan’s MFN status was suspended by specific law which also provided for its eventual restoration, under specified conditions, by executive action without congressional involvement (Section 118, P.L. 99-190; 18 U.S.C. 2434 note). In 1989, the designation “Communist countries” was omitted from the title of the list of countries denied MFN tariff treatment in the newly enacted Harmonized Tariff Schedule of the United States<sup>7</sup> (HTSUS) and the

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<sup>6</sup> Both actions were taken by Presidential proclamations, respectively, Nos. 4991 (47 F.R. 49005; October 27, 1982) and 5610 (52 F.R. 5425; February 19, 1987).

<sup>7</sup> General Note 3(b), “Rates of Duty Column 2,” HTSUS (19 U.S.C. 1202). - Duty rates in Column 2 of the HTSUS are full (non-MFN) rates mostly as set by the Tariff Act of 1930.

designation of the countries themselves was streamlined to reflect the actual post-World War II international border changes. This streamlining did not affect the Baltic countries (Estonia, Latvia, and Lithuania), which remained listed individually, since their incorporation into the USSR had not been recognized by the United States. The suspension of East Germany's MFN tariff status automatically ended with the unification of the two Germanies on October 3, 1990. By the end of 1990, MFN status had also been restored.

On June 1, 1990, the United States and the Soviet Union signed a bilateral trade agreement, providing among other benefits, reciprocal most-favored-nation treatment. Implementing legislation was introduced with some delay (October 1991) and enacted on December 9, 1991 (P.L. 102-197). Because of the dissolution of the Soviet Union in late December 1991, the agreement did not enter into force for the Soviet Union, but became the master agreement for subsequent extensions of MFN treatment to the 12 individual newly independent republics (the Baltic republics excepted), formerly constituting the USSR. Appropriately retitled, with the required technical changes, and signed in each individual instance, it entered into force for each former Soviet republic upon the exchange of notices of acceptance (see below).

Much activity related to MFN tariff status of U.S. trading partners took place during the 102nd through 105th Congresses (1991-1998).

MFN status was restored temporarily under the waiver provision of Title IV to Bulgaria and Mongolia in November 1991; and permanently by law in December 1991 to previously non-MFN countries Estonia, Latvia, and Lithuania, after they declared their independence from the Soviet Union, and, in April 1992, to Czechoslovakia (as of January 1, 1993, split into the Czech Republic and Slovakia) and Hungary (both of which already had MFN status under Title IV). After the dissolution of the Soviet Union in late December 1991, the suspension of MFN tariff status continued in force individually with respect to the Soviet Union's other (than the three Baltic) 12 former constituent republics. Most of these had their MFN status restored within the next two years under the waiver provision of Title IV and by acceding to the U.S.-Soviet trade agreement of June 1, 1990, modified to apply to each individual republic. Thus annually renewable MFN status was restored to Armenia in April 1992, Russia and Ukraine in June 1992, Moldova in July 1992, Kyrgyzstan in August 1992, Belarus and Kazakhstan in February 1993, Georgia in August 1993, Turkmenistan in October 1993, Tajikistan in November 1993, and Uzbekistan in January 1994. Azerbaijan was the only former Soviet republic whose MFN status had not been restored under Title IV by the end of 1994, since the agreement was still awaiting (since April 1993) the approval by that country.

During the same period, MFN tariff status also was regained under Title IV waiver provision by Albania (November 1992) and Romania (November 1993, following the September 1992 refusal, for the second time, of the House to restore it). MFN status of Bulgaria and the Russian Federation, restored earlier under the waiver provision (see above), was continued in force by presidential determinations of full compliance with the freedom-of-emigration requirements (made, respectively, in June 1993 and September 1994).

Although President Bush issued in October 1992 a notice of intention to restore MFN status to Afghanistan, suspended in 1986 (see p. 5), the restoration did not take place until June 2002 (see p. 12).

Also in October 1992, legislation (P.L. 102-420; 19 U.S.C. 2432 note) was enacted to withdraw MFN tariff status from Serbia and Montenegro (constituent republics of Yugoslavia in its reduced size). The status could be restored by the President to either republic 30 days after he certifies to the Congress that such republic had ceased its warlike activities in the former Yugoslavia. (See also p. 16.)

In the 104<sup>th</sup> Congress, MFN tariff status was extended in April 1995 to Azerbaijan under the Jackson-Vanik waiver provision, and permanent and unconditional MFN tariff status was restored in late 1996 by specific law to three countries: Bulgaria, and Romania (both of which at the time already had MFN status under the full-compliance provision of the Jackson-Vanik amendment), respectively, by P.L. 104-162 and Presidential proclamation 6922, effective October 25, 1996, and P.L. 104-171 and Presidential proclamation 6951, effective November 12, 1996; and Cambodia (then still a non-MFN country, but considered as not being subject to Title IV) by P.L. 104-203, effective October 25, 1996, upon the reciprocal exchange of notices of acceptance of the bilateral trade agreement of October 4, 1996 (61 F.R. 56256).

Measures introduced in the 104<sup>th</sup> Congress to restore MFN tariff status, either temporarily or permanently, to a number of other countries were not given further consideration, nor were measures denying or restricting MFN status of certain countries in a variety of circumstances. The Senate did, however, approve in September 1996 a bill to substitute in all U.S. statutes the often misunderstood term “most favored nation treatment” with “normal trade relations;” a similar House bill, using the term “standard trade relations,” remained pending (see next page). (Also suggested during the consideration of this change were other replacement terms, among them some technically more accurate terms such as “standard tariff relations” and “standard tariff treatment.”)

In 1996, the President renewed his determinations of full compliance with the Jackson-Vanik amendment requirements for Bulgaria, Romania (both subsequently granted permanent MFN status; see above), and Russia, and made, in September, the initial such determination for Mongolia.

By the end of 1996 (104<sup>th</sup> Congress), the President, as required by Section 405(b)(1)(B) of the Trade Act of 1974 (see p. 4), also confirmed three-year extensions of trade agreements with 17 of the 19 NME countries that required such action (in several instances with considerable delays). No such determinations were published for two countries upon the lapse of the initial three-year term provided in the agreement itself, and unconditional nondiscriminatory treatment was accorded by legislation during the same period to two countries subject to Title IV (thus eliminating the need for their triennial determinations).

During the 105<sup>th</sup> Congress, several bills affecting the MFN status of U.S. trading partners were introduced, but none enacted. Most legislative action involved bills to permanently restore MFN tariff status to Mongolia (passed by the House and

favorably reported in the Senate) and Laos (favorably reported in the Senate). Introduced but not further considered was a bill granting permanent nondiscriminatory status to Kyrgyzstan, and one that would grant, under certain conditions, permanent MFN status to any country still without it. On the other hand, bills also were introduced (but not acted upon) which would withdraw MFN tariff treatment from certain countries.

The President, at the appropriate times, extended all the existing Jackson-Vanik waivers, made the initial determination of full compliance with the free-emigration requirements by all but two countries (Belarus and China) then still subject to the waiver<sup>8</sup>, and subsequently reconfirmed such compliance. The President also issued, in April 1998, the initial Jackson-Vanik waiver for Vietnam. Joint resolutions to disapprove this waiver were introduced in both houses and reported unfavorably, whereupon the House resolution was defeated, allowing Vietnam's waiver to remain in force.<sup>9</sup>

No Presidential determinations of satisfactory reciprocation of concessions (see previous page), however, were published during the 105<sup>th</sup> Congress (nor since, except for Vietnam in 2004; see p. 16) providing for the triennial renewal of the relevant trade agreements with six more NME countries whose initial or earlier renewed agreements had meanwhile lapsed. This lapse, however, has not in practice affected the NTR status of the countries involved, since they are all still treated as having NTR status, apparently solely on the basis of the standard provision for automatic triennial renewal contained in the trade agreements themselves.

During the entire period from mid-1989 to the statutory extension of PNTR in 2001, the most controversial issue of the U.S. MFN policy has been the **MFN status of China**. The President's annual renewals of China's Jackson-Vanik waiver and MFN status faced strong opposition in Congress. Nevertheless, joint resolutions introduced every year in the aftermath of the June 1989 Tiananmen Square incident to disapprove such renewals were not adopted. Two bills to subject China's MFN status to additional restrictions, passed during the 2nd session of the 102nd Congress, were vetoed by the President, and in both cases the veto was upheld by the Senate. Similar legislation as well as joint resolutions disapproving China's waiver in subsequent Congresses were not enacted.

Without actually affecting the practical effect of MFN treatment, legislation, first introduced in 1996 (see previous page), was finally enacted in 1998 (Section 5003 of the Internal Revenue Service Restructuring and Reform Act of 1998; P.L.

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<sup>8</sup> Armenia, Azerbaijan, Georgia, Moldova, and Ukraine on June 3, 1997, and Albania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan on December 5, 1997

<sup>9</sup> This waiver did not, of itself, restore nondiscriminatory treatment to Vietnam, since the other required element of such restoration — the conclusion and congressional approval of a bilateral trade agreement — was still lacking (p. 10). The waiver did, however, open up Vietnam's access to other benefits subject to Jackson-Vanik criteria (credit operations of the Export-Import Bank, and investment guaranties of the Overseas Private Investment Corporation), provided the requirements of the agencies' organic legislation have been complied with.

105-206; 19 U.S.C. 2481 note) to replace the term “most favored nation” in seven specific statutes in which it appeared, with “normal trade relations” or another similar appropriate term (e.g., nondiscriminatory), and required the new term to be used in all subsequent trade legislation. The term “most favored nation,” however, continues to be used in international practice and in U.S. trade agreements with other countries, occasionally in conjunction with the new term.

In view of the then-prospective accession of the Kyrgyz Republic (Kyrgyzstan) to the World Trade Organization (which eventually took effect on December 20, 1998) and the obligation of a WTO member to accord permanent and unconditional most-favored-nation treatment to all WTO members, the United States on October 9, 1998, invoked Article XIII of the WTO Agreement. The article allows the nonapplication of the entire WTO Agreement (and not merely of one part of it, which had been possible under the comparable Article XXXV of the GATT 1947) between any current WTO member and the acceding member, upon written notice to the WTO by either, before the latter’s accession. Without invoking Article XIII, the United States would have been in violation of its WTO MFN obligation toward the Kyrgyz Republic because of the latter’s, at the time, nonpermanent and conditional MFN status, subject to the Jackson-Vanik amendment. (Identical action had been taken in similar circumstances on July 11, 1996, with respect to Mongolia, then a candidate for WTO membership. After Mongolia’s accession to the WTO (January 29, 1997) and the eventual extension of permanent MFN status to Mongolia by the United States (see below), U.S. recourse to Article XIII with respect to Mongolia was rescinded by the United States on July 7, 1999.)

## Developments During the 106<sup>th</sup> Congress

In the 106<sup>th</sup> Congress, legislation was enacted and implemented to extend permanent nondiscriminatory status to Mongolia, Albania, Kyrgyzstan, Georgia, and China; and the required semiannual reports of full compliance with the requirements of the Jackson-Vanik provision by ten former Soviet Union republics were made by the President, as was the renewal of Jackson-Vanik waivers for Belarus, China, and Vietnam; joint resolutions to disapprove the latter two extensions, introduced in both houses, failed to be enacted.

Extensions of **permanent** nondiscriminatory tariff status were enacted and implemented as follows:

(1) *Mongolia* — enacted June 25, 1999, by Section 2424 of the Miscellaneous Trade and Technical Corrections Act of 1999 (P.L. 106-36) (19 U.S.C.2434 note) and implemented by Presidential proclamation 7207, effective July 1, 1999 (64 F.R. 36549).

(2) *Albania*, and *Kyrgyzstan* — enacted May 18, 2000, respectively, by Sections 301 and 302 of the Trade and Development Act of 2000 (P.L. 106-200) (19 U.S.C. 2434 note) and implemented by Presidential proclamation 7326, effective June 29, 2000 (65 F.R. 41547). (Subsequently (September 18, 2000), the United States

withdrew the October 9, 1998, invocation of WTO nonapplication Article XIII with respect to Kyrgyzstan; see p. 9).

(3) *Georgia* — enacted November 9, 2000, as Title III of the Miscellaneous Trade and Technical Corrections Act of 2000 (P.L. 106-476) (9 U.S.C. 2434 note) and implemented by Presidential proclamation 7389, effective December 29, 2000 (66 F.R. 703).

(4) *China* — enacted October 10, 2000, as Title I of P.L. 106-286 (Normal Trade Relations for the People's Republic of China) (19 U.S.C. 2431 note) and implemented by Presidential proclamation 7516, effective January 1, 2002 (67 F.R. 479). The delayed entry into force of P.L. 106-286 was due to the provision of Section 102 of the law, which precluded the actual extension of permanent NTR to China before China's accession to the World Trade Organization (which eventually took place on December 11, 2001).

The tie-in between the U.S. grant of permanent NTR treatment to China and China's accession to the WTO ran in both directions. On the one hand, although China's very comprehensive trade agreement with the United States was negotiated outside the Working Party for China's accession to the WTO, it became part of China's protocol of accession; on the other hand, most-favored-nation treatment of China by the United States was required by the WTO Agreement as a reciprocal obligation of WTO members. Such obligation could have been avoided only by the United States' (or China's) invocation of WTO Article XIII, which allows reciprocal nonapplication of obligations under the WTO Agreement (including the MFN treatment) between a current and the acceding WTO member (cf. Kyrgyzstan, p. 9). Invoking Article XIII would have meant that the United States would be precluded from benefitting not only from China's comprehensive concessions in its 1999 bilateral agreement with the United States but also from those in the agreements with other WTO members. Such action would have meant that the United States' benefits from trade with China would have remained limited to those — of very general nature — contained in the much less comprehensive bilateral agreement concluded in 1979, provided China did not decide to renounce even that in accordance with the provisions of that agreement itself.

The bilateral trade agreement with China had been signed on November 15, 1999, after protracted negotiations. Even before the President Clinton transmitted the agreement to Congress for approval in a message on March 8, 2000 (H.Doc. 106-207), the House Ways and Means Committee held a hearing (February 16, 2000) on the U.S.-China trade agreement and China's accession to the WTO. Shortly thereafter, legislation approving the agreement (containing in Title I permanent restoration of NTR treatment) was introduced in both houses (S. 2277, March 23; H.R. 4444, May 15, 2000). Both bills authorized the President to determine that the provisions of Title IV of the Trade Act of 1974 (providing for temporary conditional restoration of nondiscriminatory treatment) should no longer apply to China and to proclaim the extension of permanent nondiscriminatory treatment to China. Before making such determination, however, the President was to certify to Congress that the terms and conditions for China's accession to the WTO are at least equivalent to those contained in the U.S.-China agreement of November 15, 1999.

Both bills were reported favorably: H.R. 4444, amended, on May 22, 2000 (H.Rept.106-632, by Ways and Means Committee) and on May 23 (H.Rept. 106-636, by Rules Committee); and S. 2277, unamended, on May 25 (S.Rept. 106-305, by Finance Committee). H.R. 4444, as amended, was passed by the House on May 24 in a roll-call vote of 237 to 197, and, in the House-approved version, by the Senate on September 19, 2000, by a vote of 83 to 15. It was signed by the President on October 10, 2000 (P.L. 106-286). (S. 2277 was not voted on.) (Entry into force was delayed until January 1, 2002; see below: Developments during the 107<sup>th</sup> Congress).

Also signed during the 106<sup>th</sup> Congress (July 13, 2000) was a comprehensive trade agreement with *Vietnam*, which, however, did not enter into force until December 2001 (see Developments during the 107<sup>th</sup> Congress). The agreement was in many ways similar to the one with China and contained among many other provisions a reciprocal grant of nondiscriminatory (MFN; NTR) status.

All required **Presidential** semiannual determinations of continued full compliance with the requirements of the Jackson-Vanik amendment — due in mid- and late 1999 and 2000 — were made, although occasionally with some delay. Since, in the meantime, several countries had been granted permanent NTR treatment, the end-of-2000 determination (January 20, 2001) involved only nine countries, all former republics of the Soviet Union (Armenia, Azerbaijan, Kazakhstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan).

On June 3, 1999, the President recommended one-year extensions of Jackson-Vanik waivers for Belarus, China, and Vietnam, triggering the introduction of joint resolutions disapproving the extensions for China and Vietnam. Both resolutions failed to pass the House, respectively on July 27 and August 3, 1999. Similarly, Presidential mid-2000 (June 2) recommendations (Presidential determinations Nos. 2000-21, -22, and -23) to extend the waivers, respectively, for Vietnam, Belarus, and China were followed by the introduction on June 6 of H.J.Res. 99 and S.J.Res. 47 to disapprove the extension of Vietnam's waiver and of H.J.Res.103 to disapprove the extension of China's waiver. H.J.Res. 99 was reported adversely (H.Rept. 106-794) and defeated in the House (91- 332) on July 26, 2000; H.J.Res. 103 was reported adversely (H.Rept. 106-755) and defeated in the House (147-281) on July 18, 2000.

In addition to the trade agreements whose Presidential triennial renewals (see p. 8) had lapsed earlier, renewal determinations of six more agreements lapsed during the 106<sup>th</sup> Congress. During the same period, however, unconditional nondiscriminatory treatment was restored by law to four NME countries, all with lapsed renewal determinations.

The earlier invocation of the nonapplication Article XIII of the WTO Agreement with respect to Kyrgyzstan (see p. 8) was rescinded on September 18, 2000, in view of the U.S. extension of permanent nondiscriminatory treatment to Kyrgyzstan by P.L. 106-200 (see p. 9).

## Developments During the 107<sup>th</sup> Congress

During the 107<sup>th</sup> Congress, two major trade agreements (one with Vietnam, and one with China), both signed during the preceding Congress, entered into force.

As required by Section 101 of P.L.106-286, the President, on November 9, 2001, transmitted to Congress the report on the equivalency of the terms and conditions of *China's* accession to the WTO to those contained in the 1999 U.S.-China trade agreement (H.Doc.107-146) (see p. 10), and, subsequent to China's accession to the WTO on December 11, 2001, in Proclamation 7516 of December 27, 2001 (67 F.R. 479) extended to China permanent nondiscriminatory treatment, effective January 1, 2002.

The agreement with *Vietnam*, together with Presidential proclamation 7449 (66 F.R. 31375) to implement it, was transmitted by the President on June 8, 2001 (H.Doc. 107-85), to Congress for legislative approval. Legislation to approve the extension of nondiscriminatory status (and thereby also implement the agreement) (S.J.Res. 16 and H.J.Res. 51) was introduced, respectively, on June 11 and 12, 2001. A hearing on the U.S.-Vietnam trade relations was held by the House Ways and Means Trade Subcommittee on June 15, 2001, and on the trade agreement by the Senate Committee on Finance on June 26, 2001. Both resolutions were reported favorably (H.Rept. 107-198, September 5, 2001; S.Rept. 107-49; July 27, 2001); H.J.Res. 51 was passed by the House (by voice vote) on September 6, 2001, and by the Senate (88-12) on October 3, 2001 (on the same date, S.J.Res. 16 was indefinitely postponed by unanimous consent), and signed by the President on October 16, 2001 (P.L. 107-52). A resolution ratifying the agreement was approved by Vietnam's National Assembly on November 28, 2001, and signed by Vietnam's President on December 4, 2001. The agreement and reciprocal nondiscriminatory tariff treatment entered into effect on December 10, 2001, by an exchange of notices of acceptance of the agreement (66 F.R. 65019). The agreement is to remain in force by means of triennial extensions according to its own terms and by Presidential determinations of satisfactory reciprocation of trade concessions (see p. 4, and also p. 16). Vietnam's nondiscriminatory status is still conditional and subject to the Jackson-Vanik amendment, hence its restoration remains subject to Title IV requirements and procedure.

Legislation was introduced, but not acted upon, to extend permanent nondiscriminatory tariff treatment to Afghanistan (whose PNTR status has since been restored by Presidential action; see below), Cuba, Kazakhstan, Russia, Ukraine, Uzbekistan, and Yugoslavia (Serbia and Montenegro).

Under the authority of Section 118(b)(2)(C) of P.L. 99-100 (19 U.S.C. 2434 note), under which Afghanistan's MFN status was suspended (Pres. Proc. 5437; 51 F.R. 4287) effective February 18, 1982 (see. p. 5), President Bush restored nondiscriminatory status to Afghanistan by Proclamation 7553 (67 F.R. 30535; H.Doc. 107-208), effective June 2, 2002.

Semiannual Presidential reports of nonviolation of the Jackson-Vanik amendment's freedom-of-emigration criteria were issued with respect to the nine

former Soviet Union republics subject to such reporting, on January 17, 2001 (H.Doc. 107-17), July 2, 2001 (H.Doc. 107-98), January 18, 2002 (H.Doc. 107-169), and July 3, 2002 (H.Doc.107-240),

China's and Vietnam's (but — possibly by an oversight — not Belarus's) Jackson-Vanik waivers were extended for another year on June 1, 2001 (Presidential determinations Nos. 2001-16 and -17) (66 F.R. 30631 and 30633); and resolutions to disapprove them were introduced, respectively, on June 5, 2001 (H.J.Res. 50) and June 21, 2001 (H.J.Res. 55). H.J.Res. 50 was reported adversely (H.Rept. 107-145) and defeated in the House (169-259) on July 19, 2001; H.J.Res. 55 also was reported adversely on July 23 (H.Rept. 107-154) and defeated in the House (91-324) on July 26, 2001, thus allowing the temporary NTR treatment of both countries to continue in force. Belarus' waiver, which had not been extended by the statutory deadline (June 3, 2001), was issued anew on July 2, 2001 by Executive Order 13220 (66 F.R. 35527).

By the time the mid-2001 waiver was issued for *China*, legislation to approve the comprehensive bilateral trade agreement with China, containing a reciprocal grant of permanent nondiscriminatory treatment, had already been enacted (see p. 10). Nevertheless, a mid-2001 extension of the waiver was necessary to maintain in force the temporary NTR treatment under Title IV, based on the 1979 Agreement, because of the statutorily mandated delay in the actual extension of permanent NTR treatment to China. Section 102(a) of P.L. 106-286 precluded such extension before China's accession to the World Trade Organization, which was then being negotiated, but foreseen as unlikely to take place before the expiration, in mid-2001, of China's 2000 one-year waiver (cf. p. 9).

Waivers for Belarus and Vietnam were renewed again on June 3, 2002, by Presidential determinations 02-21 and -22 (67 F.R. 40833 and 48035). H.J.Res. 101, introduced on June 25, 2002, disapproving the extension of Vietnam's waiver, was reported adversely on July 22, 2002 (H.Rept. 107-602), and defeated (91 - 338) on the following day.

No action took place regarding the lapsed triennial renewals of trade agreements with NME countries, based on the President's determinations of satisfactory reciprocation of concessions (see p. 4), but one country theretofore subject to the determination requirement (Mongolia) was meanwhile granted permanent nondiscriminatory status (see p. 9)

On January 8, 2001, the September 30, 1999, recourse by the United States to Article XIII with respect to Georgia (whose accession to the WTO took effect June 14, 2000) was rescinded upon the implementation of permanent NTR for that country. In view of the impending accession of Moldova to the WTO (eventually approved by the WTO General Council on May 8, 2001, and taking effect on July 26, 2001), the United States, on May 2, 2001, invoked the application of Article XIII with respect to Moldova. The invocation is still in effect since Moldova is still subject to the conditional MFN treatment under Title IV of the 1974 Trade Act. Similarly, on December 9, 2002, the United States invoked WTO Article XIII with respect to Armenia, at the time in the last stage of accession to the WTO, but not a beneficiary of unconditional MFN treatment by the United States (see also p. 17).

Based on a determination by the U.S. Trade Representative under Section 301 of the Trade Act of 1974 that Ukraine failed to adequately protect U.S. intellectual property rights, prohibitive imports duties of 100 percent — in addition to an earlier suspension of Ukraine's designation as a beneficiary developing country for duty-free imports under the generalized system of preferences — were imposed as of January 23, 2002, on imports under 23 tariff items in total annual value of approximately \$75 million, many of them normally free of duty (67 F.R. 120). This action, in effect, rescinded in part the nondiscriminatory treatment applicable to Ukraine under the provisions of Title IV of the Trade Act of 1974, it did not, however, affect the U.S. general MFN obligation under the WTO since Ukraine is not a WTO member. (See also p. 17).

## Developments During the 108<sup>th</sup> Congress

A great deal of **legislative** activity to restore PNTR to a number of countries took place in the 108<sup>th</sup> Congress, but in a few instances NTR-adverse action also was initiated. Except for two PNTR-granting measures (in favor of Armenia, and Laos), all proposed legislation died in the relevant committees.

As a move apparently preliminary to some of the pending and prospective extensions of PNTR, the chairman of the House Trade subcommittee, on March 5, 2003, announced a request for comments on the extension of PNTR to *Armenia*, *Laos*, and *Moldova*. The received comments were published on April 21, 2003, as Ways and Means Committee Print 108-8 (*Written comments on extension of permanent normal trade relations status to Armenia, Moldova, and Laos*, 218 p.).

On February 4, 2003 — one day before *Armenia* acceded to the WTO — H.R. 528 was introduced to extend permanent nondiscriminatory treatment to that country. An identical bill (S. 1557) was later (August 1, 2003) introduced also in the Senate; a provision with identical operative language was contained in Section 3601 of H.R. 3521, introduced on November 19, 2003, and passed by the House on the following day, but not considered in the Senate. Armenia's PNTR status was eventually enacted by Section 2001 of the Miscellaneous Trade and Technical Corrections Act of 2004 (P.L. 108-429; H.R. 1047<sup>10</sup>; December 3, 2004) and implemented by Presidential Proclamation 7860, effective January 7, 2005 (70 F.R. 2321) (see p. 17).

PNTR-restoring legislation was introduced, but not further considered, with regard to: *Belarus* (H.R. 3823; February 24, 2004), *Cuba* (Section 8 of the United States-Cuba Trade Act of 2003; S. 403; February 13, 2003); *Kazakhstan* (H.R. 3708; January 20, 2004); *Laos* (H.R. 3195, September 29, 2003; H.R. 3943 and S. 2200, March 11, 2004<sup>11</sup>); *Russia* (S. 580, March 10, 2003; companion bills H.R. 1224 and

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<sup>10</sup> Prior to its conference version, H.R. 1047 contained also a provision — originally included in S. 671, which had been incorporated in H.R. 1047 as an amendment — restoring PNTR to Serbia and Montenegro, but left out in P.L. 108-429, since such restoration had meanwhile already taken place by executive action (see p. 16).

<sup>11</sup> All three measures would extend PNTR treatment to Laos on the effective date of a notice, (continued...)

S. 624, March 12 and 13, 2003, in which PNTR status would not be extended if a joint resolution were enacted disapproving the bilateral U.S.-Russia trade agreement to be negotiated as part of Russia's accession to the WTO); and *Ukraine* (H.R. 3906, H.R. 3958, and H.R. 4619, and S. 2205, introduced, respectively, March. 4, and 11, June 18, and March 11, 2004).

While separate bills to restore PNTR status to *Laos* died in their respective committees, the restoration of nondiscriminatory treatment to Laos was provided for in Section 2005 of P.L. 108-429 (see above), added during the conference on that measure. Its operative provisions are identical to those of the three measures referred to in footnote 11. The provision entered into force on February 4, 2005, pursuant to a USTR's Federal Register notice, published on February 11, 2005 (70 F.R. 7319).

As an NTR-adverse action, H.R. 3228, introduced on October 2, 2003, would rescind *China's* NTR treatment and prohibit its restoration in the future. Moreover, S. 1586 and H.R. 3364, introduced respectively on September 5 and October 21, 2003, would, in effect, nullify China's NTR status by imposing on any import from China a 27.5-percent ad valorem duty in addition to any other duty, unless the President certifies to Congress that China no longer manipulates the exchange rate between the U.S. dollar and Chinese yuan and that the latter is valued in accordance with accepted market-based trading policies.<sup>12</sup> In the same context, H.R. 3058 and S. 1758, introduced respectively on September 10 and October 20, 2003, would require the Secretary of the Treasury to determine whether China manipulates its yuan/dollar exchange rate, compute the rate of manipulation, and submit a report thereon to Congress; the Secretary would be authorized to impose on all imports from China an additional duty at the rate equal to the rate of manipulation.<sup>13</sup>

NTR-adverse action also was initiated against *Laos*. H.R. 3000, prohibiting the United States to enter with Laos into a trade agreement providing for reciprocal extension of most-favored-nation treatment, was introduced on November 18, 2004. By that date, however, such agreement had already been long signed (see footnote 11) and legislation providing for Laos' PNTR was in its final stages of enactment.

In the general context, Section 4(1)(B)(iv) of S. 1861 (Sanctions Policy Reform Act, introduced November 14, 2003) listed the imposition of increased tariffs, including the denial, revocation, or conditioning of nondiscriminatory trade treatment, as a sanction falling within the scope of the legislation.

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<sup>11</sup> (...continued)

published by the U.S. Trade Representative in the Federal Register, that the comprehensive U.S. trade agreement (containing a reciprocal extension of unconditional most-favored-nation treatment), concluded on August 13, 1997, and signed on September 18, 2003, has entered into force.

<sup>12</sup> Despite recent minor adjustments, the value of the yuan is maintained in an arbitrary exchange rate to the dollar rather than floating freely in response to the situation on the foreign exchange market.

<sup>13</sup> The enactment and implementation of any of these measures would, in normal trade circumstances, be likely to open the United States to accusations of violating the WTO Agreement and the U.S.-China bilateral trade agreement.

Except as indicated above (concerning Armenia, and Laos), all of these bills died in the committees of referral.

On January 29, 2003, **the President** transmitted to Congress the 2002 year-end report on full compliance with the freedom-of-emigration requirements of the *Jackson-Vanik* amendment by nine former Soviet republics (H.Doc. 108-28), and on May 29, 2003, extended the waivers for Belarus and Vietnam (Pres. Determinations 2003-25 and -24; 68 F.R. 35527 and 35525; H.Docs. 108-81 and 108-80), thereby continuing in force these countries' temporary nondiscriminatory tariff treatment by the United States. Legislation disapproving Vietnam's waiver (H.J.Res. 64) was introduced on July 9, 2003, but died in committee.

On July 31, 2003, the full-compliance reporting function was delegated by the President to the Secretary of State by Executive Order 13313 (68 F.R. 46073; August 5, 2003), and the last full-compliance report by the President was transmitted to Congress on August 8, 2003, for nine former Soviet republics (H.Doc. 108-111). On the same date, Turkmenistan's full-compliance determination was rescinded (Pres. Det. 2003-31; 68 F.R. 49325; August 18, 2003), and its Jackson-Vanik status (and temporary NTR treatment) reverted to one based on the waiver, which was issued on the same date (E.O. 13314, 68 F.R. 48249; August 13, 2005).

On November 4, 2003, the Secretary of State, under delegation of Presidential authority contained in the statute suspending the PNTR treatment of *Serbia and Montenegro* (formerly Yugoslavia) (P.L.102-420) (see p. 7), notified to Congress his certification of that country's compliance with the statute's requirements for executive restoration of PNTR status, which took effect on December 4, 2003 (Public Notice 4526; 68 F.R. 64410; November 13, 2003).

The 2003 year-end full-compliance report was submitted to Congress — for the first time under the Presidential delegation of function (see above) — by the Assistant Secretary of State for Legislative Affairs, with a positive determination for eight former Soviet republics. On June 3, 2004, the President renewed the Jackson-Vanik waivers for Belarus (H.Doc.108-190; Pres. Det. 2004-33, 69 F.R. 32431), Turkmenistan (H.Doc. 108-189; Pres. Det. 2004-32, 69 F.R. 32429), and Vietnam (H.Doc. 108-191; Pres. Det. 2004-34, 69 F.R. 32433); and on July 1, 2004, a full-compliance determination was submitted to Congress for the eight former Soviet republics.

Similarly to the mid-2003 delegation of full-compliance-reporting function under the Jackson-Vanik amendment, the President delegated, effective July 8, 2004, to the Secretary of State also the functions of making waivers, determinations, certifications, recommendations, and reports in connection with the Jackson-Vanik waiver provision (19 U.S.C.2432(d)(1)) (E.O.13346, 69 F.R. 41905, July 13, 2004).

As required by 19 U.S.C. 2435(b)(1)(B)), the President, on December 10, 2004, made the determination of satisfactory reciprocation of trade concessions with Vietnam, provided in the bilateral trade agreement with that country (see p. 12) (Pres. Det. 2005-11; 69 F.R. 76587, December 21, 2004), and thereby renewed that agreement for the following three years.

The 2004 year-end report on full compliance with the amendment's requirements (technically due by December 31, 2004) was submitted by the Assistant Secretary of State for Legislative Affairs on January 11, 2005, for the eight former Soviet republics.

## Developments During the 109<sup>th</sup> Congress

In the 109<sup>th</sup> Congress, **legislative** activity to extend permanent normal trade relations treatment has focused on *Ukraine*. Operationally identical as to the termination of application of the Jackson-Vanik provision and proclamation of the extension of permanent nondiscriminatory treatment (although in several instances differing from each other in Congressional findings and additional trade-related provisions) are (with their respective 2005 dates of introduction): H.R. 885 (February 17), H.R. 1053 (March 2), H.R. 1170 (March 8), S. 46 (January 24), S. 410 (February 2), and S. 632 (March 16), all pending in respective committees.

Also pending are two NTR-adverse measures: H.R. 728 (February 9, 2005), which would terminate NTR treatment of *China* and prohibit its restoration under any circumstance, and H.R. 967 (February 17, 2005), which would deny NTR treatment to any country that, based on the Secretary of State's report to Congress, denies or violates basic human rights of its citizens.

On the **executive** side, the President by Proclamation 7860, effective January 7, 2005 (70 F.R. 2321; January 12, 2005), extended permanent nondiscriminatory trade treatment to *Armenia* pursuant to Section 2001(b) of P.L. 108-429 (see p. 14); and subsequently (on February 2, 2005) the United States rescinded the invocation of WTO Article XIII with respect to *Armenia* (see p. 13) and effected full application of the WTO Agreement between the two countries.

On June 1, 2005, the Secretary of State issued Public Notice 5120, extending the overall Jackson-Vanik waiver authority and the waiver for *Vietnam* for one year (70 F.R. 36998). In addition, the Acting Assistant Secretary of State for Legislative Affairs transmitted to Congress reports continuing in force the Jackson-Vanik waivers for *Belarus*, *Turkmenistan*, and *Vietnam*, and, on July 7, 2005, also the semiannual report on full compliance with the Jackson-Vanik requirements by seven former Soviet republics (omitting *Armenia*, which in the meantime had been extended permanent nondiscriminatory treatment), thereby continuing in effect for one year their conditional NTR status.

With effect on August 30, 2005, the U.S. Trade Representative terminated the 100-percent ad valorem duties placed in early 2002 on imports of products under 23 tariff items from *Ukraine* (see p. 13), thereby restoring to *Ukraine* full — if still conditional — nondiscriminatory trade treatment (70 F.R. 53410, September 8, 2005).

## Present Status

In view of the statutory general applicability of permanent MFN status to U.S. trading partners under Section 126 of the Trade Act of 1974, there is no official specific list of countries with MFN status: all countries other than those to which MFN tariff status has been specifically denied by law or extended conditionally under Title IV of the Trade Act of 1974, have permanent and unconditional MFN status. The United States also extends permanent MFN treatment to member-countries of the World Trade Organization on the basis of the obligation of general most-favored-nation treatment under Article I of GATT 1994. Excepted from this obligation are WTO members with regard to which the invocation of the nonapplication Article XIII of the WTO Agreement is in effect (at present: Moldova; see next page)

Countries to which MFN tariff status is denied altogether are: *Cuba*, and *North Korea*, and its restoration requires congressional action through either direct legislation (for permanent NTR status) or use of Title IV of the Trade Act of 1974 (for conditional NTR status).

Countries to which MFN tariff status is at present being extended after having been conditionally restored temporarily under the provisions of Title IV are:

(1) under the waiver of Jackson-Vanik amendment requirements, which must be renewed annually and the renewal of which is subject to disapproval by joint resolution of Congress: *Belarus*, *Turkmenistan*, and *Vietnam* (see p.17); and

(2) under the determination of continued “nonviolation” (i.e., full compliance with) the Jackson-Vanik amendment criteria, which, after the initial one, must be renewed semiannually and is subject to disapproval by joint resolution of Congress at the time of year-end renewal: *Azerbaijan*, *Kazakhstan*, *Moldova*, *Russia*, *Tajikistan*, *Ukraine*, and *Uzbekistan* (see p. 16).

Permanent or temporary nondiscriminatory treatment can normally be restored to any country by direct legislation enacted under regular legislative procedure or, if qualifying for Title IV procedure, under that procedure, likewise requiring legislative action. Legislation is pending for direct restoration of unconditional and permanent nondiscriminatory treatment to *Ukraine*. A recent exception to this norm, effective as of December 4, 2003), has been executive restoration of PNTR status to (formerly Yugoslavia) under the already existing specific authority (see p. 15).

Presidential determinations of satisfactory reciprocation of concessions, which the law requires for renewing the triennial terms of bilateral trade agreements with NME countries (see p. 4), have in the past been published with delays or, in recent years, not at all. At present, renewal determinations regarding agreements with all NME countries still subject to the renewal requirement (other than the recently renewed agreement with *Vietnam*; see p. 16) have technically lapsed. This lapse, however, has not in practice affected the NTR status of these countries, since they are all still treated as having NTR status, apparently solely on the basis of the standard provision for automatic triennial renewal contained in the trade agreements themselves.

Although *Moldova* has been a member of the WTO since July 26, 2002, the WTO agreement does not apply between it and the United States because the United States has invoked the nonapplication Article XIII of the WTO with respect to Moldova, due to the still conditional and temporary NTR treatment of Moldova by the United States, subject to the Jackson-Vanik amendment. In similar circumstances, Article XIII had been invoked also with respect of Armenia, which acceded to the WTO on December 9, 2002, and was disinvoked on February 4, 2005, after the legislative extension by the United States of PNTR to Armenia.

PNTR treatment of *China* would be either rescinded or, in effect, nullified by legislation to impose additional duty on all imports from China to counteract China's manipulation of the U.S. dollar/Chinese yuan exchange rate. In one measure, a 27.5-percent duty would be imposed, unless the President certifies that China no longer manipulates the U.S. dollar/Chinese yuan exchange rate; in another, the Secretary of the Treasury would be authorized to impose the duty at a rate equal to the percentage rate of exchange manipulation (see p. 15).

The term "most favored nation" has been replaced in U.S. legislation by law in all seven instances in which it appeared with the expression "normal trade relations" or another appropriate term and is to be so replaced in all future legislation. The MFN term, however, is still being used in practice internationally and in U.S. trade agreements; in some of the latter, both terms are used in parallel (see pp. 8-9).

## Appendix A. Legislation

**Note:** All measures authorizing the extension of permanent normal-trade-relations treatment to Ukraine contain functionally identical operative provision (application of NTR treatment itself), but are listed separately due to variations in their other provisions (findings, additional provisions).

**H.R. 728 (Sanders)**

Terminates China's NTR treatment and prohibits its restoration. Introduced February 9, 2005; referred to Committee on Ways and Means.

**H.R. 885 (Hyde)/S. 410 (McCain)**

Authorize the extension of nondiscriminatory treatment to products of Ukraine. Introduced, respectively, February 17 and 16; referred, respectively, to Committees on Ways and Means, and Finance.

**H.R. 967 (Saxton)**

Prohibits extension of NTR treatment to any country that engages in violation of certain human rights. Introduced February 17, 2005; referred to Committee on Ways and Means.

**H.R. 1053 (Gerlach)**

Authorizes the extension of nondiscriminatory treatment to products of Ukraine. Introduced March 2, 2005; referred to Committee on Ways and Means.

**H.R. 1170 (Levin)**

Authorizes the extension of nondiscriminatory treatment to products of Ukraine. Introduced March 8, 2005; referred to Committee on Ways and Means.

**H.R. 1575 (Myrick)**

Provides for the imposition of 27.5-percent additional duty on all imports from China, if negotiations on China's currency undervaluation and manipulation are not successful. Introduced April 12, 2005; referred to Committee on Ways and Means.

**S. 46 (Levin)**

Authorizes the extension of nondiscriminatory treatment to products of Ukraine. Introduced January 24, 2005; referred to Committee on Finance.

**S. 295 (Schumer)**

Provides for the imposition of 27.5-percent additional duty on all imports from China, if negotiations on China's currency undervaluation and manipulation are not successful. Introduced February 3, 2005; referred to Committee on Finance.

**S. 632 (Lugar)**

Authorizes the extension of nondiscriminatory treatment to products of Ukraine. Introduced March 16, 2005; referred to Committee on Finance.

## Appendix B. Recent Chronology (108<sup>th</sup> through 109<sup>th</sup> Congresses)

- 08/31/05** — The U.S. Trade Representative lifted the 100% additional tariff on certain imports from Ukraine (imposed as of January 23, 2002, as a sanction for violation of intellectual property rights), thereby restoring full — but still conditional — NTR treatment.
- 07/07/05** — The Assistant Secretary of State for Legislative Affairs reported to Congress that eight former Soviet republics are in full compliance with the requirements of the Jackson-Vanik amendment,
- 06/??/05** — The Acting Assistant Secretary of State for Legislative Affairs extended the waivers for Belarus, Turkmenistan, and Vietnam for a year.
- 06/01/05** — The Secretary of State extended the waiver authority and Vietnam’s waiver for a year (see 06/03/04).
- 04/12/05** — H.R. 1575 introduced to extend permanent NTR to Ukraine.
- 03/16/05** — S. 632 introduced to extend permanent NTR to Ukraine.
- 03/08/05** — H.R. 1170 introduced to extend permanent NTR to Ukraine.
- 03/02/05** — H.R. 1053 introduced to extend permanent NTR to Ukraine.
- 02/17/05** — H.R. 885 (identical with S. 410) introduced to extend permanent NTR to Ukraine.  
— H.R. 967 introduced to prohibit extension of NTR treatment to any country that engages in violation of certain human rights..
- 02/16/05** — S. 410 introduced to extend permanent NTR to Ukraine.
- 02/09/05** — H.R. 728 introduced to withdraw NTR treatment from China and prohibit its reinstatement.
- 02/05/05** — The United States disinvoked recourse to nonapplication Article XIII of the GATT 1994 with regard to Armenia (invoked December 12, 2002).
- 02/04/05** — Permanent NTR treatment extended to Laos pursuant to U.S. Trade Representative’s notice (70 F.R. 7319) (see 12/03/04).
- 02/03/05** — S. 295 introduced to impose an additional 27.5-percent duty on all imports from China unless China takes action to revalue its currency upward to or near its fair value.
- 01/24/05** — S. 46 introduced to extend permanent NTR to Ukraine.

- 01/11/05** — Assistant Secretary of State for Legislative Affairs reported to Congress that eight former Soviet republics are in full compliance with the requirements of the Jackson-Vanik amendment. (Since the report was due by December 30, 2004, it reflected the status as of that date and, hence, still included Armenia).
- 01/07/05** — The President extended permanent nondiscriminatory treatment to Armenia (Pres. Procl. 7860, 70 F.R. 2321, January 12, 2005).
- 12/10/04** — The President renewed for three years the trade agreement with Vietnam (Pres. Det. 2005-11; 69 F.R. 76587, December 21, 2004).
- 12/03/04** — P.L. 108-429 (H.R. 1047) enacted, in Sections 2001 and 2005, respectively, extending permanent NTR treatment to Armenia and to Laos.
- 07/08/04** — The President delegated to the Secretary of State the function of one-year extension of Jackson-Vanik waiver authority and waivers in force (E.O. 13346, 69 F.R. 41905, July 13, 2004).
- 07/01/04** — The President reported to Congress that eight former Soviet republics are in full compliance with the requirements of the Jackson-Vanik amendment, thereby continuing in force their NTR treatment by the United States.
- 06/03/04** — The President extended for one year the Jackson-Vanik overall waiver authority, and waivers for Turkmenistan, Vietnam, and Belarus (Pres. Determinations. 2004-32, -33 and -34 (69 F.R. 32429, 32431 and 32433; H. Docs. 108-189, -190 and -191).
- 03/11/04** — H.R. 3943 to extend nondiscriminatory treatment to Laos introduced.  
— H.R. 3958 to extend nondiscriminatory treatment to Ukraine introduced.
- 12/31/03** — The President reported to Congress that eight former Soviet republics are in full compliance with the requirements of the Jackson-Vanik amendment,
- 12/04/03** — Permanent NTR treatment restored to Serbia and Montenegro by Executive action (Notice by Secretary of State under delegated Presidential authority of P.L. 102-420; 68 F.R. 64410).
- 11/20/03** — H.R. 3521 (see 11/19/03) passed by the House.
- 11/19/03** — H.R. 3521 introduced, in Section 3601 authorizing extension of permanent nondiscriminatory treatment to Armenia.
- 10/21/03** — H.R. 3364 (identical with S. 1568; see 09/05/03) introduced.
- 10/20/03** — S. 1758 (identical with H.R. 3058; see 09/10/03) introduced.

- 10/02/03** — H.R. 3228 introduced to rescind China's NTR treatment and prohibit its restoration in the future.
- 09/29/03** — H.R. 3195 introduced to extend permanent nondiscriminatory treatment to Laos.
- 09/18/03** — U.S.-Laos bilateral trade agreement, containing reciprocal extension of most-favored-nation treatment, signed.
- 09/10/03** — H.R. 3058 was introduced, requiring the Secretary of the Treasury to analyze China's exchange rate policies and impose additional duties on imports from China at a rate equal to the rate of China's manipulation of the U.S. dollar/Chinese yuan exchange rate.
- 09/05/03** — S. 1586 was introduced to impose an additional 27.5-percent duty on imports from China, unless the President certifies that China no longer manipulates the U.S. dollar/Chinese yuan exchange rate.
- 08/08/03** — The President reported to Congress (H.Doc. 108-111) that nine former Soviet republics are in full compliance with the requirements of the Jackson-Vanik amendment, but terminated Turkmenistan's full-compliance determination (Pres. Det. 2003-31; 68 F.R. 49325) and instead issued a Jackson-Vanik waiver for Turkmenistan (E.O. 13314; 68 F.R. 48249), thereby continuing in force their NTR treatment by the United States.
- 08/01/03** — S. 1557 (identical with H.R. 528; see 02/04/03) was introduced to grant permanent nondiscriminatory treatment to Armenia.
- 07/31/03** — The President delegated to the Secretary of State the function of reporting on continued full compliance with the provisions of the Jackson-Vanik amendment (E.O. 13313, 68 F.R. 46073).
- 05/29/03** — The President extended for one year the Jackson-Vanik waiver authority and waivers for Vietnam and Belarus (Pres. Determinations. 2003-24 and -25 (68 F.R. 35525 and 35527; H.Docs. 108-80 and -81).
- 03/13/03** — S. 624 (identical with H.R. 1224) was introduced to extend permanent nondiscriminatory treatment to Russia.
- 03/12/03** — H.R. 1224 was introduced to authorize extension of permanent nondiscriminatory treatment to Russia, unless the U.S.-Russia agreement negotiated as part of Russia's accession to the WTO is disapproved by joint resolution.
- 03/10/03** — S. 580 was introduced to authorize extension of permanent nondiscriminatory treatment to Russia.

- 03/05/03** — Chairman Crane of the House Trade Subcommittee announces request for written comments on extension of permanent nondiscriminatory treatment to Armenia, Laos, and Moldova.
- 02/13/03** — “United States-Cuba Trade Act of 2003” (S. 403) was introduced, in Section 8 authorizing the extension of permanent nondiscriminatory treatment to Cuba.
- 02/05/03** — Armenia acceded to the World Trade Organization, but the WTO Agreement did not apply between it and the United States because of the invocation by the United States (on December 9, 2002) of WTO “nonapplication” article XIII, until permanent MFN treatment is granted to Armenia by the United States (see 01/07/05 and 02/05/05).
- 02/04/03** — H.R. 528 was introduced to grant permanent nondiscriminatory treatment to Armenia..
- 01/29/03** — The President reported to Congress (H.Doc. 108-28) that nine former Soviet republics are in full compliance with the requirements of the Jackson-Vanik amendment, thereby continuing in force their NTR treatment by the United States.

## **Appendix C.**

### **Congressional Hearings, Reports, and Documents (108<sup>th</sup> through 109<sup>th</sup> Congresses)**

- U.S. Congress. House. Committee on Ways and Means. Subcommittee on Trade. Written comments on extension of permanent normal trade relations status to Armenia, Moldova, and Laos. April 21, 2003. (WMCP: 108-8). Washington, U.S. Govt. Print. Off, 2003. 218 p.
- U.S. President, 2001- (Bush). Continuation of waiver under the Trade Act of 1974 with respect to the Republic of Belarus; communication from the President of the United States... Washington, U.S. Govt. Print. Off., 2003. 5 p. (108<sup>th</sup> Congress, 1<sup>st</sup> Session. H. Doc. 108-81.) Communication dated May 29, 2003.
- Continuation of waiver under the Trade Act of 1974 with respect to Vietnam; communication from the President of the United States... Washington, U.S. Govt. Print. Off., 2003. 7 p. (108<sup>th</sup> Congress, 1<sup>st</sup> Session. H. Doc. 108-80.) Communication dated May 29, 2003.
- Emigration laws and policies; message from the President of the United States... Washington, U.S. Govt. Print. Off., 2003. 6 p. (108<sup>th</sup> Congress, 1<sup>st</sup> Session. H.Doc. 108-28). Message dated January 29, 2003.
- Emigration laws and policies of Armenia, Azerbaijan, Kazakhstan, Moldova, the Russian Federation, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan; communication from the President of the United States... Washington, U.S. Govt. Print. Off., 2003. 6 p. (108<sup>th</sup> Congress, 1<sup>st</sup> Session. H.Doc. 108-111). Communication dated August 8, 2003).
- Extension of waiver authority for the Republic of Belarus; communication from the President of the United States ... Washington, U.S. Govt. Print. Off., 2004. 5 p. (108<sup>th</sup> Congress, 2d Session. H.Doc. 108-190). Communication dated June 3, 2004.
- Extension of waiver authority for Turkmenistan; communication from the President of the United States ... Washington, U.S. Govt. Print. Off., 2004. 5 p. (108<sup>th</sup> Congress, 2d Session. H.Doc. 108-189). Communication dated June 3, 2004.
- Extension of waiver authority for Vietnam; communication from the President of the United States ... Washington, U.S. Govt. Print. Off., 2004. 7 p. (108<sup>th</sup> Congress, 2d Session. H.Doc. 108-191). Communication dated June 3, 2004.

## Appendix D. For Additional Reading

### CRS Reports

CRS Report 96-463. *Country Applicability of the U.S. Most-favored-nation Status*, by Vladimir N. Pregelj.

CRS Report 96-317. *Extension, Renewal, or Denial of Most-favored-nation Status to Nonmarket Economy Countries*, by Vladimir N. Pregelj.

CRS Report 98-545. *The Jackson-Vanik Amendment: A Survey*, by Vladimir N. Pregelj.

CRS Report RS21123. *Permanent Normal Trade Relations (PNTR) Status for Russia and U.S.-Russian Economic Ties*, by William H. Cooper.

CRS Report RS20717. *Vietnam Trade Agreement: Approval and Implementing Procedure*, by Vladimir N. Pregelj.

CRS Report RL30416. *The Vietnam-U.S. Bilateral Trade Agreement*, by Mark E. Manyin.