



CRS Issue Brief

92094: Most-Favored-Nation Status of the People's Republic of China

Updated December 6, 1996

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SUMMARY

The Tiananmen Square massacre of June 4, 1989, and the repressive policies and violations of human rights by the Chinese government that followed it, led to the imposition by the United States of some economic and other sanctions against China and to consideration of additional sanctions, among them the withdrawal of China's most-favored-nation (MFN), or nondiscriminatory, status in trade with the United States. After having been suspended in 1951, MFN status was restored to China in 1980 conditionally under the Jackson-Vanik freedom-of-emigration amendment of the Trade Act of 1974 and must be renewed annually. The lapse or withdrawal of the MFN status would result principally in the imposition of substantially higher U.S. customs duties on over 95% of U.S. imports from China (totaling \$45,555 million in 1995) 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 may likely result for Hong Kong.

Various legislation introduced in the 102nd Congress to withdraw or severely restrict China's MFN status failed to be enacted, in two instances for failure of overriding the President's veto. In mid-1993, the President set additional human rights conditions for the renewal of China's MFN status in mid-1994, but this policy was reversed in 1994, by delinking the MFN renewal from human rights and other conditions except the freedom-of-emigration requirement, triggering new legislative measures to restrict China's MFN status, none of which was enacted. Joint resolutions to disapprove the mid-1995 and mid-1996 renewals of China's waiver failed to be approved by the House. At the end of the 104th Congress, a bill to extend MFN status to China only by enactment was still pending in the House.

MOST RECENT DEVELOPMENTS

On May 31, 1996, President Clinton issued his determination to extend China's waiver and most-favored-nation (MFN) status for another year; and, on June 21, 1996, he issued a determination renewing the trade agreement with China for another 3-year term (through January 31, 1998).

On June 27, 1996, the House failed to pass [H.J.Res. 182](#), which would have disapproved the extension of China's waiver and MFN status, thus allowing both to remain in force through July 2, 1997. The House did, however, adopt a resolution ([H.Res. 461](#)) calling on various committees to hold hearings and report out appropriate legislation to deal with China on a variety of issues, including trade, weapons proliferation, human rights, and military policy.

BACKGROUND AND ANALYSIS

China's MFN Status

The United States has applied most-favored-nation (MFN) treatment in trade 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 status 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 status as of September 1, 1951. After China's occupation of Tibet, that country's MFN status was suspended as of July 14, 1952. MFN status could thereafter be restored to any of the suspended countries only by specific law, until the Trade Act of 1974, in Title IV, provided special authority and set out the conditions and the procedure for its restoration to "nonmarket economy" (NME) countries and subsequent continuation in force.

The key elements of the procedure for restoring MFN status are (1) the conclusion of a bilateral trade 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") of the Trade Act of 1974. The latter requirements can be fulfilled either by a Presidential determination that the NME country in question places no obstacles to free emigration of its citizens, or by a Presidential waiver of full compliance, under specified conditions.

The continuation in force of the MFN status is contingent on (1) automatic triennial renewal of the trade agreement if a satisfactory balance of concessions has been maintained during the life of the agreement and the President determines that actual or foreseeable reductions in U.S. trade barriers resulting from multilateral negotiations (which also benefit China because of its MFN status) are satisfactorily reciprocated; and (2) annual renewal of the waiver authority and existing waivers, which is automatic upon Presidential recommendation, in mid-year, unless vitiated by the enactment of a joint resolution of disapproval.

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, and the executive order extending 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 (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) on February 1, 1980.

Although the agreement, concluded for a 3-year initial term, provides for automatic 3- year extensions, its continuation in force is also subject to Section 405(b)(1)(B) of the Trade Act of 1974 (19 USC 2435(b)(1)(B)), which applies to any trade agreement with an NME. The provision requires the President to determine "that actual and foreseeable reductions in United States tariff and nontariff barriers ... resulting from multilateral negotiations are satisfactorily reciprocated by the other party...." The agreement has been thus far renewed five times, most recently by Presidential Determination No. 96-33 of June 21, 1996 (61 F.R. 32631) through January 31, 1998.

The Jackson-Vanik overall waiver authority and China's waiver, likewise, have been extended annually by Presidential action, although often not without congressional attempts at disapproving such extension. The extension and disapproval procedure entails (1) a President's recommendation, made by June 3 of any year, that the waiver authority and individual waivers be extended for another year. The extension is automatic unless (2) it is disapproved by the enactment of a joint resolution.

The language of the resolution is prescribed by law, and a specific fast-track procedure is provided for its consideration. In its basic steps, the resolution must be reported within 30 days of session (or else the committee considering it may be discharged), is not amendable, 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. Specific steps are provided in the event of a presidential veto. If the resolution is enacted, the waiver and the status cease to be effective on the 61st day after its enactment.

Withdrawing or Restricting China's MFN Status

MFN status can be withdrawn from China in several ways: (1) by appropriate direct legislation enacted through regular legislative process; (2) by using the specific means provided in the Trade Act of 1974 for denying MFN status to a NME country that had it restored under that law, i.e., by the 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, or (3) by the President's failure to recommend such renewal with respect to China in the first place (e.g., for noncompliance with the Jackson-Vanik requirements). China also can lose its MFN status if the agreement is terminated, upon notice, at the end of a term or if the 3-year extension of the U.S.-China trade agreement does not take place because the President declines to make the required determination. (See

also p. 2.)

Restrictions of varying severity or scope can be applied to China's MFN status by specific legislation enacted under the regular procedure.

In the years past, the Congress has often attempted to terminate or restrict China's MFN status by means of joint resolutions disapproving the annual extension of China's waiver or by specific legislation, or subject its continuation in force to additional conditions, primarily in the area of human rights. None of these measures became law, although two of them (one in either session of the 102nd Congress) to set 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 status. These conditions closely reflected those set in the several versions of the United States-China Act of 1993 and, in addition to compliance with the Jackson-Vanik amendment, required: mandatory 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, releasing 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.

While 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, 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 only on the basis of its statutory condition, namely, compliance with the freedom-of-emigration requirement of the Jackson-Vanik amendment. Legislative measures to disapprove the renewal or subject it again to broad human rights conditions failed.

In 1995, the Trade Subcommittee of the House Ways and Means Committee, anticipating the 1995 Presidential extension of the waiver, on May 23, 1995, held a hearing on the U.S.-China trade relations and renewal of China's most-favored-nation status. The extension itself, without additional conditions, took place on June 2, 1995, by Presidential Determination 95-23 (60 FR 31047; H.Doc. 104-82) and was followed by the introduction of resolutions disapproving the extension (H.J.Res. 96 and S.J.Res. 37). H.J.Res. 96 was reported adversely ([H.Rept. 104-188](#)), considered under a rule (H.Res.139; [H.Rept. 104-194](#)) and tabled July 20, 1995, by a yea-and-nay vote of the House (321-107). This action precluded the enactment of the companion measure (S.J.Res. 37).

In the present session of the 104th Congress, the renewal procedure was begun by Presidential Determination 96-29 of May 31, 1996 (H.Doc. 104-223), whereupon S.J.Res. 56, H.J.Res. 181 and H.J.Res. 182 to disapprove it were introduced, respectively, June 6, 12, and 13, 1996. Committee hearings on the renewal of China's MFN status and related foreign policy topics were held May 16, 1996, jointly by the Subcommittees on International Economic Policy and Trade, and on Asia and the Pacific of the House International Relations Committee; June 5, 1996, by the Senate Foreign Relations Committee's Subcommittee on East Asian and Pacific Affairs; June 6, 1996, separately by the Senate committees on Finance, and on Foreign Relations; June 11, 1996, by the House Ways and Means Subcommittee on Trade; and June 18, 1996, by the International Operations and Human Rights Subcommittee of

the House. H.J.Res. 182 was reported adversely June 25, 1996 ([H.Rept. 104-634](#)) and, following the approval of a rule for its enactment (H.Res. 463; [H.Rept. 104-636](#)), was defeated June 27, 1996 by a recorded vote of 141 to 286, precluding any action on companion measures. China's waiver and MFN status, thus, remain in force through July 2, 1997.

(On June 27, 1996, the House, by a vote of 411 yeas to 8 nays, passed a resolution (H.Res. 461) calling on various committees to hold hearings and report out appropriate legislation to deal with China on a variety of issues, including trade, weapons proliferation, human rights, and military policy.)

Introduced but without further action in the 104th Congress were several measures adverse to China. One was contained in the proposed Chinese Human Rights Act of 1995 (H.R. 1849), introduced June 14, 1995, and referred to the Committees on Ways and Means, on International Relations, and on the Judiciary. This provision (Section 4) would nullify China's waiver and subject its restoration to the enactment of a specific statute under the regular procedure.

China's MFN status would -- in effect, although not with that specific intent -- also be partially nullified by H.R. 3421, introduced May 8, 1996. The bill would require the President to impose additional tariffs on imports from China, which would remain in force until the President determines that China is fully implementing the bilateral agreement on the protection of American intellectual property rights in China.

A possible restriction on China's MFN status would result from the enactment H.R. 3569, introduced June 4, 1996, which would allow the status to continue provided Taiwan is admitted to the World Trade Organization by March 1, 1997.

Denial of China's MFN status, in whichever manner brought about, would have to be implemented also with having regard of two relevant provisions of the U.S.-China trade agreement, 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.

In addition, 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," might conceivably, if circumstances would warrant, be used to suspend the MFN treatment.

Effects of Withdrawing China's MFN Status

Termination of China's MFN status would result in duty increases on about 95% of U.S. imports from China. The cost effect of the increases would vary among the various product groups, but would on the whole be substantial.

The following table illustrates how the withdrawal of the MFN status would affect the duty rates assessed on major U.S. import items from China.

TABLE or GRAPHIC not shown here

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.

Based on our survey of the 87 individual items whose imports in 1995 exceeded \$100 million each and whose total accounted for \$23.2 billion (51%) of all U.S. imports from China in that year, the termination of China's MFN status would increase the average importers' cost of Chinese products by some 35%, in most individual instances between 25% and 65%, but also on occasion (e.g., toys) substantially more. While some of the increases would likely be in part partially absorbed in the subsequent chain of distribution, relative cost increases at the retail level would be high particularly on low-margin consumer goods (clothing, household electrical and electronic products, toys, etc.), of which China is a substantial supplier, and some of which may even be priced out of the U.S. market. Much of the sourcing of products now imported from China also would be likely to shift to other countries or domestic producers with higher prices but subject to MFN or no duties. This would still result in increased costs, which would affect disproportionately low-income U.S. consumers.

On the Chinese side, such changes would obviously reduce significantly the U.S. demand for such imports from China. The size of this reduction and 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) that 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 about 70% of China's exports to the United States, and whose businessmen also have substantial manufacturing interests in the neighboring southern China.

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.

LEGISLATION

[H.Res. 193](#) (Solomon)

Provides for the consideration of [H.R. 2058](#) ("China Policy Act of 1995," which contains no MFN-related provisions) and [H.J.Res. 96](#) (disapproving the extension of China's Jackson-Vanik waiver). Limits debate on H.J.Res. to one hour, allows one motion to table, and precludes consideration under the Trade Act procedures of any other similar disapproval resolution during the 1st session of the 104th Congress. Introduced, reported favorably by Committee on Rules ([H.Rept. 104-194](#)), and passed by voice vote July 20, 1995.

[H.Res. 461](#) (Cox)

Regarding U.S. concerns with human rights abuse, nuclear and chemical weapons proliferation, illegal weapons trading, military intimidation of Taiwan, and trade violations by the People's Republic of China and the People's Liberation Army, and directing the committees of jurisdiction to commence hearings and report appropriate legislation. Introduced as an original measure of the Committee on Rules and reported favorably June 24, 1996 ([H.Rept. 104-636](#)); adopted by yeas and nays vote (411 to 7) June 27, 1996.

[H.J.Res. 463](#) (Solomon) Provides for the consideration of [H.J.Res. 182](#) (disapproving renewal of China's MFN status) and [H.Res. 461](#) (see immediately preceding item). Introduced and reported favorably ([H.Rept. 104-636](#)) June 25, 1996, and adopted June 27, 1996.

[H.J.Res. 96](#) (Wolf); [S.J.Res. 37](#) (Feingold)

Disapproves the extension of China's Jackson-Vanik waiver. [H.J.Res. 96](#) introduced June 16, 1995; referred to Committee on Ways and Means; reported adversely with minority and dissenting views July 20, 1995 ([H.Rept. 104-188](#)); tabled by yeas and nays vote (321-107) July 20, 1995. [S.J.Res. 37](#) introduced July 10, 1995; referred to

Committee on Finance; action on [H.J.Res. 96](#) precluded enactment of [S.J.Res. 37](#).

[H.J.Res. 181](#) (Walker)/[S.J.Res. 56](#) (Helms)

Disapprove the extension of China's Jackson-Vanik waiver. [H.J.Res. 181](#) introduced June 12, 1996; referred to Committee on Ways and Means. [S.J.Res. 56](#) introduced June 6, 1996; referred to Committee on Finance. Further consideration of either measure was precluded by House disapproval of [H.J.Res. 182](#).

[H.J.Res. 182](#) (Rohrabacher)

Disapproves the extension of China's Jackson-Vanik waiver. Introduced June 13, 1996; referred to Committee on Ways and Means; reported adversely June 25, 1996 ([H.Rept. 104-634](#)); failed to pass the House June 27, 1996 (on recorded vote of 141 ayes to 286 noes).

[H.R. 1849](#) (Stockman)

Chinese Human Rights Act of 1995. Sec. 4 nullifies any Jackson-Vanik waiver with respect to China, and prohibits granting MFN status to China other than by statute. Introduced June 14, 1995; referred to the Committees on Ways and Means, on International Relations, and on the Judiciary.

[H.R. 3569](#) (Cox)

Provides that China's MFN status may continue provided that Taiwan is admitted to the World Trade Organization by March 1, 1997. Introduced June 4, 1996; referred to Committee on Ways and Means.

CHRONOLOGY

06/27/96 ---By a recorded vote of 141 ayes and 286 noes, the House failed to pass H.J.Res. 182 to disapprove the renewal of China's MFN status.

06/27/96 (Congressional Record date June 26, 1996) The House agreed to the rule (H.Res. 463) providing for consideration of H.J.Res. 182 and H.Res. 461.

06/25/96 ---H.J.Res. 182 reported adversely by the House Ways and Means Committee ([H.Rept. 104-634](#)).

---H.Res. 463, providing for consideration of H.J.Res. 182 and H.Res. 461 introduced and reported by the House Rules Committee ([H.Rept. 104-636](#)).

06/21/96 ---In Pres. Determination 96-33 (61 FR 32631), the President reconfirmed satisfactory balance of past trade concessions and satisfactory reciprocation by China of U.S. tariff and nontariff barrier reductions, thereby extending the U.S.- China trade agreement through January 31, 1998.

06/18/96 ---International Operations and Human Rights Subcommittee of the House International Relations Committee held a hearing on China MFN: Human Rights Consequences.

06/13/96 ---H.J.Res. 182, to disapprove the President's renewal of China waiver and MFN status, was introduced.

06/12/96 ---H.J.Res. 181, to disapprove the President's renewal of China waiver and MFN status, was introduced.

06/11/96 ---House Ways and Means Trade Subcommittee held a hearing on U.S.-China trade relations and renewal of China's MFN status.

06/06/96 ---S.J.Res. 56, to disapprove the President's renewal of China waiver and its MFN status, was introduced.

---Senate Finance and Foreign Relations Committees held separate hearings on foreign policy implications of renewing China's most-favored-nation status.

06/05/96 ---Senate Foreign Relations Subcommittee on East Asian and Pacific Affairs holds a hearing on foreign policy implications of renewing China's most-favored- nation status.

06/04/96 ---H.R. 3569 introduced to provide that China's MFN status may continue provided that Taiwan is admitted to the World Trade Organization by March 1, 1997.

05/31/96 ---In Presidential Determination 95-29 (61 F.R. 29455; H.Doc. 104-223) President Clinton extended China's Jackson-Vanik waiver and MFN status for one year.

05/16/96 ---House International Relations subcommittees on International Economic Policy and Trade, and on Asia and the Pacific held a joint hearing on the impact of MFN for China on U.S.-China economic relations.

07/20/95 ---H.J.Res. 96 to disapprove the extension of China's Jackson-Vanik waiver tabled by yea-and-nay vote (321-120).

---H.Res. 193, providing a rule for consideration of H.J.Res. 96, passed by voice vote.

07/19/95 ---Committee on Rules, by a voice vote, granted and reported a rule (H.Res. 193; [H.Rept. 104-194](#)), providing for consideration of H.J.Res. 96.

07/17/95 ---H.J.Res. 96, to disapprove the extension of China's Jackson-Vanik waiver, adversely reported by the Ways and Means Committee ([H.Rept. 104-188](#)).

07/10/95 ---S.J.Res. 37, to disapprove the extension of China's Jackson-Vanik waiver, introduced.

06/16/95 ---H.J.Res. 96 to disapprove the extension of China's Jackson-Vanik waiver introduced.

06/14/95 ---H.R. 1849 introduced; Sec. 4 nullifies any Jackson-Vanik waiver with respect to China and prohibits according MFN status to China by any means other than statute.

06/02/95 ---In Presidential Determination 95-23 (60 FR 31047; H.Doc. 104-82), President Clinton extended China's Jackson-Vanik waiver and MFN status for one year.

05/23/95 ---House Ways and Means Subcommittee on Trade held a hearing on U.S.-China trade relations and renewal of China's most-favored-nation status.

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Human Rights. *China MFN: Human Rights Consequences*. Hearing, 104th Congress, 2d session. June 18, 1996. Washington, U.S. Govt. Print. Off., 1996. 164 p.

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