Order Code 98-545 E

CRS Report for Congress

Received through the CRS Web

The Jackson-Vanik Amendment: A Survey

Updated September 22, 2000

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Summary

The enactment of the Jackson-Vanik amendment as part of the Trade Act of 1974 was directly a U.S. reaction to the severe restrictions the Soviet Union had placed in late 1972 on the emigration of its citizens, but was expanded in its scope to apply to all so-called "nonmarket economy" (NME) countries. The amendment requires compliance with its specific free-emigration criteria as a key condition for the restoration of certain economic benefits theretofore denied to NME countries in their economic relations with the United States. These benefits (nondiscriminatory—most-favored-nation—treatment in trade; access to U.S. government financial facilities; ability to conclude a trade agreement with the United States) may be extended to an NME country subject to the amendment if the President determines that the country is not in violation of the emigration criteria of the amendment, or if he waives, under specified conditions, the requirement of full compliance with the criteria. Such determinations or waivers must be renewed periodically.

Although the determinations of full compliance, or its waivers, do not require congressional approval, they may be rescinded, at the time of their annual renewals, by the enactment of joint resolutions of disapproval, for which a special fast-track procedure is provided. Although frequently initiated, congressional attempts to disapprove such renewals, particularly with respect to China, have invariably been unsuccessful.

Under these provisions, waivers have been granted to 25 countries, almost all of which have been subsequently determined to be in full compliance, and some of these have later, by law or other circumstance, been excluded altogether from the purview of the amendment, as have several others with respect to which the amendment had never been used.

In consequence, there are, at present, still 16 countries arguably subject to the amendment, of which 3 are in compliance with its requirements by waiver and 10 by determination of no violation, and 3 still not in compliance (and, hence, continue to be denied the benefits contingent on such compliance).

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Background

The enactment of the so-called Jackson-Vanik ("freedom-of-emigration") amendment of the Trade Act of 1974 was a U.S. reaction to the Soviet Union's highly restrictive emigration policy of the time, but particularly to the assessment, begun in August 1972, of exorbitant "education reimbursement fees" (also referred to as "diploma taxes") on its citizens wishing to emigrate to nonsocialist countries.. Although this restrictive policy applied to all such prospective emigrants, it affected in practice primarily Soviet Jews wanting to emigrate to Israel or the United States. These fees, which could be as high as several tens of thousands of dollars, were assessed as a reimbursement to the Soviet state of its expenditures for the free higher education that the prospective emigrant had received and, because of his departure, would no longer use for the benefit of the Soviet society. The fees were geared to the level of education received (a factor of increase) and the length of time elapsed since obtaining the education, that is, the time during which the Soviet society had benefitted from that education (a factor of decrease).

The institution of these fees took place at a time when the United States and the Soviet Union already had negotiated several bilateral economic agreements and were in the process of negotiating others. Among the latter was a trade agreement, including a reciprocal grant of "most-favored-nation" (MFN; nondiscriminatory) tariff treatment. Although the subject matter of a specific bilateral agreement, MFN status, however, could not be restored to the Soviet Union (or to any other communist country whose MFN tariff status had been suspended[1]) without authorizing legislation, which was then being considered by Congress.

To counteract primarily the Soviet Union's restrictive emigration policy (but broadened to apply also to other communist countries), legislation sponsored principally by Senator Henry M. Jackson and Representative Charles A. Vanik and cosponsored by a large number of Members of both houses, was introduced in early October 1972 as a free-standing measure in the House and as an amendment to the East-West Trade Relations Act in the Senate. The legislation would condition the restoration of most-favored-nation status to nonmarket economy (NME) countries (including the Soviet Union) and their access to U.S. financial facilities on their compliance with the free-emigration criteria. Despite the introduction of this adverse

[1] As provided for by the Reciprocal Trade Agreements Act of 1951, the United States suspended the MFN tariff status (but no other aspects of the MFN policy then in effect) of all then communist countries except Yugoslavia. Prior to the enactment of the Jackson-Vanik amendment, Poland's nondiscriminatory tariff status had been restored by presidential action in 1960, and Cuba's suspended in 1962.

legislation, a most-favored-nation agreement with the Soviet Union was signed in mid-October 1972.

Neither the East-West Trade Relations Act nor the separate freedom-of-emigration legislation, however, was enacted in 1972, but virtually identical language was included the following year, in the next Congress, as an original provision[2] in the Trade Reform Act of 1973 (eventually enacted as the Trade Act of 1974) and somewhat expanded during the legislative process, even though the Soviet Union already in late 1972 had ceased assessing the fees. The Soviet Union objected to the provision, considering it an intrusion into its domestic policy and, after its enactment, in January 1975 declined to have the restoration of its access to nondiscriminatory status as provided for in the agreement and other benefits subjected to its conditions.

Provisions of the Amendment

The Jackson-Vanik amendment (Section 402 of the Trade Act of 1974, as amended; 19 U.S.C. 2432) sets a **policy of free emigration** as a condition and key element of the restoration[3] of certain specific economic benefits to a "nonmarket economy" (NME) country and of their subsequent continuation in force, under the relevant provisions of Title IV of the Act. These benefits are: the country's most-favored-nation[4] (MFN; nondiscriminatory) tariff status in its trade with the United States; its access to U.S. government financial facilities (export credits, export credit guarantees, and investment guarantees)[5]; and its ability to conclude a bilateral trade agreement with the United States (on the basis of which the MFN status is granted).

Neither the amendment nor any other statute in effect at the time of its enactment contained a **definition of a "nonmarket economy country"**[6] or provided a specific list or even a functional description of the affected countries, which could be used to determine precisely the country applicability of Title IV as a whole (containing, in addition to the Jackson-Vanik amendment, other provisions affecting NME

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[2] The provision, however, has continued to be referred to as the Jackson-Vanik "amendment."

[3] The suspensions of the nondiscriminatory tariff status of "communist countries," based on the 1951 Act, in effect at the time of the enactment of the Trade Act of 1974 and contained in General Headnote 3(d)of the Tariff Schedules of the United States (19 U.S.C. 1202), have been specifically continued in force by Section 401 of the Trade Act (19 U.S.C. 2431).

[4] Although the term "most favored nation" has been replaced in 1998, by law, in existing and future U.S. statutes with that of "normal trade relations (NTR)", it is still used in this report for reasons of historical continuity and because of its continued universal use in international trade relations and agreements, including those to which the United States is a party.

[5] Access to such facilities is also subject to other restrictions, which, however, may be—and, as needed, have been—waived by the President.

[6] A formal, statutory definition of a "nonmarket economy country" (which could, in principle, be used to determine the applicability of the Jackson-Vanik amendment) was not enacted until the Omnibus Trade and Competitiveness Act of 1988 in the context of antidumping action; a virtually identical practical definition by regulation has been in use since 1984 in countervailing action against subsidized imports.

countries). As reflected in the implementation of certain provisions of Title IV in subsequent practice (cf. footnote 21), an NME country has generally been considered to be any communist country. Yugoslavia, initially counted among Title IV NME countries, was dropped from that category in early 1981.

Somewhat better defined is the **country applicability** of the amendment itself in its role as a means for the restoration of the covered benefits. In its subsection (e), the amendment specifically exempts from its purview "any country the products of which are eligible for the rates set forth in rate column numbered 1 of the Tariff Schedules of the United States on the date of the enactment of [the Trade Act of 1974]," that is, any country which on January 3, 1975, was being denied nondiscriminatory tariff treatment by the United States.

Moreover, the applicability of the amendment to individual countries is operationally tied to Section 401 of the Trade Act (19 U.S.C. 2431). Although this section deals directly with the restoration of the nondiscriminatory treatment, it is complementary to subsection (e) of the Jackson-Vanik amendment and together with it indirectly provides a functional definition of the countries to which the amendment applies. In effect, Section 401 requires that the suspensions of nondiscriminatory tariff treatment under the 1951 Act continue in force, unless rescinded under the relevant provisions of Title IV of the Trade Act, including its Section 402. It provides that

> [e]xcept as otherwise provided in this title [i.e., Title IV of the Trade Act], the President shall continue to deny nondiscriminatory treatment to the products of any country, the products of which were not eligible for the rates set forth in rate column number 1 of the Tariff Schedules of the United States on the date of the enactment of this Act."

In explaining the provisions of Section 401, the relevant Senate report contains a list naming (in a somewhat simplified form) individually the countries and areas which were at the time of the enactment of that Act being denied nondiscriminatory status[7], and explains further that that means all then-communist countries or areas except Poland and Yugoslavia (exempted under Section 402 (e)).[8] The official list of countries denied such status, hence, ineligible for concessional duty rates in column 1 applied, was contained at the time in General Headnote 3(e) of the Tariff Schedules of the United States (TSUS) under the title *Products of Communist Countries*. The provision has continued to apply to the same countries or their successors (except

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[7] Albania, Bulgaria, China, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, those parts of Indochina (Cambodia, Laos, or Vietnam) under communist control or domination, North Korea, the Kurile Islands, Latvia, Lithuania, Outer Mongolia, Romania, Southern Sakhalin, Tanna Tuva, Tibet and the USSR. The list initially included also "Poland and area under Polish domination or control" (see also footnote 1).

[8] U.S. Congress. Senate. Committee on Finance. *Trade Reform Act of 1974; report ... on H.R. 10710.* 93[d] Congress. 2[d] Session. (S.Rept. 93-1298). November 26, 1974. Washington, U.S. Govt. Print. Off., 1974. p. 201.

those which have since been removed from its applicability by specific legislation or in some other way[9]), although most of them are no longer communist.

The list was a consolidation of individual country suspensions of MFN treatment put into effect in a series of presidential documents promulgated in 1951 and 1952 under the authority of Section 5 of the Trade Agreements Extension Act of 1951, and still reflected the immediate post-WWII changes of international borders before these were definitively settled. Although the names of several countries were already outdated at the time, their list became part of the U.S. tariff law after their consolidation and incorporation without changes of names as General Headnote 3(e) (later renumbered as 3(d)) into the totally revised and restructured basic tariff document, the TSUS (enacted by Section 101 of the Tariff Classification Act of 1962, effective January 1, 1963). They remained unchanged[10] until January 1, 1989, when the tariff schedules were again radically restructured in the form of the Harmonized Tariff Schedule of the United States (HTSUS) (enacted by Section 1204 of the Omnibus Trade and Competitiveness Act of 1988).

In the HTSUS, the country list has been simplified to conform to the current names of the countries involved, including a belated change of its applicability from the communist controlled areas of Cambodia (in the HTSUS called Kampuchea), Laos, and Vietnam to the entire areas of those countries. The provision also became General note 3(b) with its title changed to *Rates of Duty Column 2* (i.e., duty rates applicable to countries without the nondiscriminatory status).

Although the introductory sentence of the Jackson-Vanik amendment mentions "the continued dedication of the United States to fundamental human rights," its **operative provisions** condition the restoration of the access of an NME country to the covered benefits solely on the country's freedom-of-emigration policy.

The **amendment prohibits** the restoration of nondiscriminatory status and access to U.S. government financial facilities to an NME country, and disallows the conclusion of a commercial agreement with it, if that country:

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

(2) imposes a more than nominal tax on emigration or on documents required for emigration; or

(3) imposes a more than nominal tax, fee, or any other charge on any citizen because of his desire to emigrate to the country of his choice.

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[9] See p. 7 and ff.

[10] Being a current list of countries without the nondiscriminatory status (rather than a list of countries subject to the Jackson-Vanik amendment), the TSUS note (and later the comparable HTSUS note) has at no time contained the names of the countries whose nondiscriminatory status had meanwhile been restored conditionally under the provisions of Title IV, although the amendment has continued to apply to them.

The amendment also provides that its prohibitions apply to an NME country "during the period beginning with the date on which the President determines that such country [engages in any of the listed freedom-of-emigration restricting practices] and ending on the date on which the President determines that such country is no longer in violation of [the amendment's prohibitions]." In actual practice, however, there have been no formal presidential determinations of the onset of the application of the prohibition with respect to any country, and presidential determinations of cessation of violation have been of temporary nature and have had to be renewed semiannually (see next paragraph).

The ban on an NME country's **access to the benefits** to which the amendment applies may be removed temporarily if the President initially and then semiannually (by June 30 and December 31) determines and reports to Congress that the country is not in violation of the prohibition of emigration-restricting practices. Alternatively, the President may initially and then annually (in mid-year) waive full compliance with the free-emigration criteria if he reports to Congress (1) that he has determined that the waivers will henceforth substantially promote the free-emigration objectives of the amendment and (2) that he has received assurances that the emigration practices of the country will lead substantially to the achievement of the amendment's objectives. In either case, presidential determinations are subject to disapproval by Congress (see below, Congressional involvement).

The **overall waiver authority**, granted to the President by the Trade Act (with effect on January 3, 1975) for an initial period of 18 months, and any waivers issued under it, may be extended, if the President recommends such extension to Congress, for additional 12-month periods, expiring each year on July 3. The waiver extension recommendation is subject to the same conditions as the initial waiver and must be made at least 30 days before the prospective annual expiration of the authority (i.e., by June 3 of every year). It must be made in a document transmitted to both houses of Congress, in which the President must state his reasons for recommending the extension of the overall waiver authority. He also must determine for each country with respect to which a waiver already in effect is to be renewed that such renewal will substantially promote the objectives of the amendment, and state his reasons therefor.

Congressional involvement in the implementation of the President's Jackson-Vanik authority is limited. Presidential determinations, reports, and/or recommendations, required for the initial granting and/or periodic continuation of a country's eligibility, under the amendment, for the covered benefits, operate automatically and need not be approved by Congress.[11] They are, however, subject to congressional disapproval, namely, the initial and the December 31 (but not the June 30) report of "no violation" of (i.e., of full compliance with) the free-emigration criteria, or the annual mid-year recommendation to extend the waiver authority as

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[11] The key benefit conditioned on compliance with the Jackson-Vanik amendment — the restoration of nondiscriminatory tariff treatment in trade — however, is subject to initial congressional approval (by joint resolution) of a bilateral trade agreement, among other provisions, extending nondiscriminatory status to the country in question, and to subsequent triennial presidential renewals of the agreement.

such and any extant waiver, may be disapproved by joint resolution of Congress. Such a resolution can be initiated in either house but, in view of its being considered a revenue measure, must eventually be enacted as a House measure. Hence, disapproval of the waiver renewal cannot take place if no disapproval resolution has been introduced in the House, or if the House resolution has been defeated.

A joint resolution *disapproving the initial or the year-end* ***report of "no violation"*** must be enacted under its specific fast-track procedure: the operative language of the resolution is prescribed by law; after its introduction and referral to the appropriate committee of jurisdiction (House Ways and Means; Senate Finance), the resolution must be reported within 30 days of session; if the committee does not report it by that deadline, a motion to discharge it from further consideration of the resolution may be made under a specially provided procedure; the resolution is nonamendable and debate on it is limited; if the House and the Senate resolutions are not identical (e.g., apply to different countries), the final language is determined by conference; the resolution must be enacted (as a House measure[12]) within 90 session days from the date on which the President's report has been delivered to Congress; if the resolution is vetoed by the President, it is treated as enacted on the day by which the veto has been overridden by both houses either within the 90-day deadline or within 15 session days after the veto message had been delivered to Congress, whichever is later. Both, the 90- and the 15-session-day period are computed by excluding the days on which either house is not in session because of an adjournment of more than 3 days to a day certain or an adjournment *sine die*.[13]

A joint resolution *disapproving the mid-year* ***recommendation to extend the waiver authority*** (in its entirety or, more likely, with respect to individual countries), is considered and adopted by Congress under its own specific fast-track procedure, very similar to that for disapproving the "no violation" report, discussed above. This procedure, set out principally in Section 153 of the Trade Act (19 U.S.C. 2193), differs from the other one only in that it sets the deadline for the committee report on the resolution at 30 *calendar* (rather than session) days after its introduction; allows amendments to the resolution, but only with respect to the country or countries to which it applies; and, in view of this change, modifies slightly the Senate floor debate procedure. The resolution must be adopted and transmitted to the President within 60 calendar days from the date the waiver authority of the prior year would have expired without the recommendation for extension (i.e., by August 31). If the resolution is vetoed, the vote to override it must be taken within the 60-day period or within 15 days of session (computed as above) after the Congress has received the veto message, whichever is later.[14]

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[12] See footnote 15.

[13] For details of the procedure governing the consideration and enactment of a joint resolution disapproving a no-violation report, consult, in addition to the Jackson-Vanik amendment itself, Sections 152(a)(2)-(f), 154(b), and 407(c)(2) of the Trade Act (19 U.S.C. 2192(a)(2), 2194(b), and 2437(c)(2)-(f)).

[14] As in the case of the disapproval of the no-violation report (see previous footnote), much of the legislative procedure for the consideration of resolutions disapproving the extension of the waiver authority is not contained in the Jackson-Vanik amendment. The key statute is

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If a waiver disapproval resolution has been adopted in either house, the same house may not consider another resolution with respect to the same recommendation (other than a resolution adopted by and received from the other house).[15]

A joint resolution disapproving either the initial or the year-end report of "no violation" of the Jackson-Vanik criteria or the mid-year extension of the waiver authority takes effect on the 61st day after its enactment and as of that date terminates the determination of "no violation" or the country's waiver. Any country's waiver can also be terminated at any time by law or executive order, or, at the time of its annual renewal, by not being recommended for renewal.

The discontinuance of either type of a country's compliance with the requirements of the Jackson-Vanik amendment, whether by presidential action or legislative disapproval, brings about the termination not only of the country's nondiscriminatory tariff status but also of its access to the other benefits covered by the amendment, whether or not authorized under their own specific statutes. Conversely, the restrictions of the Jackson-Vanik amendment on access to benefits other than nondiscriminatory tariff status are removed merely by compliance with the provisions of the amendment and are not contingent on the restoration of the country's nondiscriminatory status.

Application of the Amendment

Of the two ways of complying with the Jackson-Vanik requirements, the **waiver provision** has been used more frequently and always as the initial way. It was applied for the first time on April 24, 1975 — still under the initial waiver authority and only a few months after its enactment — in connection with the extension of nondiscriminatory treatment to Romania. On March 17, 1978, Romania was followed by Hungary, and further initial waivers were issued for China (with Tibet) (October 23, 1979); Czechoslovakia (February 20, 1990); East Germany (August 15, 1990); Soviet Union (including the three Baltic republics: Estonia, Latvia, and Lithuania[16])

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[14] (...continued)
Section 153 of the Trade Act (19 U.S.C. 2193) in conjunction with its Section 152 (19 U.S.C. 2192). Both sections are considered an exercise of the rulemaking power of either house of Congress and may be changed by either house with respect to its own procedure in the same manner and to the same extent as any other rule (Section 151(a), Trade Act of 1974; 19 U.S.C. 2191(a)). — Detailed step-by-step procedure for the enactment of a joint resolution disapproving the annual extension of the waiver authority (focusing specifically on China, but applicable generally) is described in *Legislative Procedure for Disapproving the Renewal of China's Most-Favored-Nation Status* (CRS Report 96-490).

[15] Nevertheless, since a waiver disapproval resolution is considered a "revenue" measure and as such must originate in the House, the House could not vote on a Senate resolution after its own resolution had been defeated.

[16] Neither the Presidential determination to issue a waiver for the Soviet Union nor the executive order granting it specifically mentioned their applicability to the three Baltic republics, then still *de facto* part of the Soviet Union. Their inclusion in the Soviet Union's
(continued...)

(December 29, 1990); Bulgaria (January 22, 1991); Mongolia (January 23, 1991); Romania (second waiver; see next paragraph) (August 17, 1991); Armenia (April 6, 1992); Belarus, Kyrgyzstan, Russia, Ukraine, and Uzbekistan (April 16, 1992); Albania, Azerbaijan, Georgia, Kazakhstan, and Moldova (June 3, 1992); Tajikistan, and Turkmenistan (June 24, 1992); and Vietnam (April 9, 1998). In every instance, except as yet in that of Vietnam, the issuance of a waiver was followed by the temporary restoration of nondiscriminatory status, based on a trade agreement (which has already been signed with Vietnam but is yet to be ratified by Vietnam's National Assembly and submitted to Congress for approval); and in every case, including Vietnam's, the waiver opened up the possibility of access to other covered benefits (some of which are subject to autonomous restrictions which can be — and have been — overcome by requisite presidential waiver or determination).

Annual recommendations of the extension of the Jackson-Vanik waiver authority and waivers in effect were being made prior to 1990 regularly for all countries in a group; since then, they have been made separately for China and for the other countries still subject to the waiver procedure (at present, Belarus, and Vietnam). From 1988 through 1991, Romania was omitted from the group recommendation because, in June 1988, it had formally renounced (with effect on July 3, 1988) its nondiscriminatory status subject to the conditions of the Jackson-Vanik amendment. Its waiver was restored on August 17, 1991, in preparation for the restoration of Romania's nondiscriminatory status under a new trade agreement with the United States, eventually concluded in April 1992.

Since the beginning of the program, *congressional action to disapprove the extension* of any country's waiver by means of a joint (prior to mid-1990, a one-house[17]) resolution has focused on only four countries. In 1975-1984 (94th-98th Congresses), 11 such resolutions were introduced in either house with respect to *Romania;* one each in 1982 and 1983 (97th and 98th Congresses), with respect to *China*; and in 1983 (98th Congress), one with respect to *Hungary*. None of these were approved in either house. Seven of them (among them all four Senate resolutions) died in committee; one was in effect defeated in the House, when a motion to discharge the Ways and Means Committee from its consideration was tabled; the remainder were either defeated or indefinitely postponed in floor votes. No disapproval resolutions were introduced in the 99th and 100th Congresses and in the first session of the 101st Congress (1985-1989). Since then, except for the

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[16] (...continued)
waiver was noted only in the President's letter notifying congressional leaders of his determination to issue the waiver, with the explanation that it in no way affected the long-standing U.S. policy of not recognizing their incorporation into the Soviet Union. Under the same policy, their nondiscriminatory status had been suspended in 1951 individually and separately from the Soviet Union, with formal acquiescence by their individual diplomatic representations in Washington, which continued to be recognized by the United States.

[17] The type of the disapproval resolution was changed — with some delay — by Section 132(a) of P.L. 101-382 of August 20, 1990, from simple to joint because of the June 23, 1983, decision of the U.S. Supreme Court in *U.S. Immigration and Naturalization Service v. Chadha*, which found legislative vetoes (e.g., disapproval of presidential action by concurrent or simple resolution) unconstitutional.

resolutions disapproving the mid-1998, mid-1999, and mid-2000 extensions of *Vietnam's* waiver (defeated in the House, respectively, on July 30, 1998, August 3, 1999, and July 26, 2000), disapproval resolutions have been introduced since 1989 only with respect to the extensions of the China waiver, initially triggered by the Tiananmen Square incident of June 4, 1989.

Although the incident occurred only a few days after the recommendation of the waiver extension for all countries, including China (which would have made possible the adoption of a resolution disapproving China's waiver by the statutory deadline of August 31), no disapproval resolutions were introduced in 1989. Since then, disapproval resolutions of waiver extensions for *China* have been introduced in every session: five were introduced in the next year (101st Congress, 2nd session), of which one was passed by the House but did not come to vote in the Senate.[18] In both sessions of the 102nd Congress, disapproval resolutions were adopted by the House but indefinitely postponed or not acted upon by the Senate. The disapproval resolutions introduced every year since then were defeated already in the House, thus precluding any action by the Senate. Thus, all attempts at disapproving the annual renewal of China's waiver have, thus far, been unsuccessful.[19]

As has been clear ever since the beginning of congressional action to disapprove the annual extensions of the Jackson-Vanik waiver authority, issues other than freedom of emigration also have been given as reasons for such disapprovals. This has been the case particularly with extensions of China's waiver: violation of human rights in general (restriction of religious freedom and ethnic minority rights, forced labor), unfair trade practices, U.S. bilateral trade deficits (focusing on the trade effects of reduced import-duty rates due to nondiscriminatory treatment), proliferation of nuclear and other weapons, and some others. In the case of Vietnam, opposition to the waiver extension has been based on Vietnam's unsatisfactory emigration policy, denial of human and religious rights, and lack of proper accounting for the POWs and MIAs.

At present, Jackson-Vanik *waivers are in effect* with respect to only 3 of the 15 countries still subject to the amendment, namely: Belarus, China (with Tibet)[20], and Vietnam. Most of the remaining countries at any time subject to the Jackson-Vanik amendment have been either "upgraded" through having been determined as not in violation of the amendment's requirements, but still subject to it, or have been removed from its application entirely by enactment or other appropriate action (see below).

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[18] In that Congress and in every Congress since, however, numerous bills have been introduced to terminate, restrict, or further condition China's nondiscriminatory status, the principal benefit subject to the Jackson-Vanik requirements. Only two were enacted by Congress (in 1992) but vetoed by the President and the veto was upheld by the Senate.

[19] For detail, see CRS Report RL30225, *Most-Favored-Nation Status of the People's Republic of China*.

[20] China's waiver will be terminated upon the implementation of H.R. 4444, which authorizes the termination of the application of Title IV and the extension of permanent nondiscriminatory treatment to China. This action, however, cannot take place before China's accession to the World Trade Organization, possibly by the end of the year 2000.

Consequently, there remain at present only three countries to which the Jackson-Vanik amendment ban applies: Cuba, Laos[21], and North Korea.

In 17 instances, **determinations of "no violation"** of the freedom-of-emigration requirements have been made by the President for NME countries to which nondiscriminatory status and other covered benefits had already been restored under the waiver provision. While this change of Jackson-Vanik amendment status in no way changes a country's nondiscriminatory treatment or its access to other covered benefits, it does suggest a symbolic U.S. approval of its emigration policy. It also has in several instances been the stepping stone to permanent restoration of the covered benefits.

Such determinations were made for Hungary on October 26, 1989; Czechoslovakia on October 16, 1991; Bulgaria on June 3, 1993; Russia on September 24, 1994; Romania on May 19, 1995; Mongolia on September 4, 1996; Armenia, Azerbaijan, Georgia, Moldova, and Ukraine on June 3, 1997; and Albania, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan on December 5, 1997. Because of subsequent terminations of the application of the Jackson-Vanik amendment to several countries (see the next paragraph), the "no violation" determinations (all — most recently — renewed in mid-2000) apply at present to 10 countries: Armenia, Azerbaijan, Georgia, Kazakhstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The application of Title IV of the Trade Act of 1974, including the **Jackson-Vanik amendment**, has been **terminated** with respect to eight countries already determined to be in full compliance, at the time when permanent nondiscriminatory status was granted to them by specific law. The countries and the relevant legislation are: Czechoslovakia (on January 1, 1993, split into the Czech Republic, and Slovakia) and Hungary (Section 2, P.L. 102-182, with effect on April 14, 1992); Bulgaria (P.L. 104-162, October 1, 1996); Romania (P.L. 104-171, November 12, 1996), Mongolia (Section 2424, P.L. 106-36; June 25, 1999), and Albania and Kyrgyzstan (Sections 301 and 302, P.L. 106-200; June 29, 2000).

Moreover, the application of Title IV (including the Jackson-Vanik amendment) to the three Baltic republics (Estonia, Latvia, and Lithuania), whose waiver had been included in the Soviet Union's waiver, was terminated, after their individual declarations of independence from the Soviet Union during the course of 1991, by legislation directly granting them permanent nondiscriminatory status (Title I, P.L. 102-182), with effect on December 19, 1991.[22]

Application of Title IV to East Germany was terminated upon the unification of East and West Germany as of October 3, 1990. The termination was put into effect by the Department of the Treasury's Office of Commercial Operations Document 90-2 of September 28, 1990 (Customs Bulletin and Decisions, v. 24, no. 45/46, November 14, 1990, p. 4).

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[21] For controversy involving the applicability of the amendment to Laos', see pp. 11-12.

[22] See footnote 16.

Unlike in the legislation restoring permanent nondiscriminatory tariff status to other countries whose nondiscriminatory tariff status had been suspended under the 1951 law, no specific provision terminating the application of Title IV was included in comparable legislation in favor of countries altogether without nondiscriminatory tariff status: in the 104th Congress, Cambodia (Kampuchea) (subsequently enacted as P.L. 104-203) and, in the 105th Congress, Laos (favorably reported in the Senate, but not further considered), with the obvious implication that neither had been subject to the Jackson-Vanik amendment. Indeed, Senate Finance Committee's reports on the restoration of Cambodia's and Laos' nondiscriminatory status (respectively, S.Rept. 104-264 and S.Rept. 105-83) specifically state that "Title IV ... has never applied to [either country]" and House Ways and Means Committee's report on restoring Cambodia's permanent nondiscriminatory status (H.Rept. 104-160) similarly states that "Title IV ... does not apply to Cambodia."

On the other hand, the opposite position, namely, that the amendment (and by implication Title IV) does apply to Vietnam, a country in very similar, but arguably not entirely identical circumstances as Cambodia or Laos, has obviously been taken by the President when he issued a Jackson-Vanik waiver for Vietnam.

The conclusions, in the reports, of nonapplicability of the entire Title IV to Cambodia and Laos are questionable. In view of the legal and practical circumstances which have had bearing on the issue, the only part of Title IV that arguably could not apply to Cambodia and Laos (and, possibly, also not to Vietnam) is the Jackson-Vanik amendment *in its specific function* as the means for restoring to them most-favored-nation treatment. That is so because, at the time of the enactment of the Trade Act, the denial of their nondiscriminatory status, the continuing application of which was mandated by Section 401 of the Trade Act, specifically applied only to those parts of the three countries that were at the time under communist domination or control. Such control became total—and in fact subjected the entire country to the denial of nondiscriminatory status—only *after* the enactment, on January 3, 1975, of the Trade Act of 1974 and its exclusive dependence on the Jackson-Vanik amendment (and related statutes) for the restoration of nondiscriminatory status to communist-controlled areas.

Although the denial of nondiscriminatory status was expanded in fact (although not formally), under the "communist-controlled area" provision (which still remained in force), to the entire territory of the country in question once it fell under total communist control, this fact was not recognized formally in the law until January 1, 1989. Only in the Harmonized Tariff Schedule of the United States (HTSUS), which entered into force on that day, was the provision denying nondiscriminatory status changed to apply to each of the three countries as a whole.

This change arguably created a functional discrepancy between, on the one hand, the geographically *partial* 1974 application of the continued denial of the nondiscriminatory tariff status by Section 401 of the Trade Act (the specifically provided condition for the restoration of which status is compliance with the Jackson-Vanik amendment) and, on the other, the actual need for a provision enabling the restoration of the status to the *entire* country, created by the changed language of the HTSUS.

These circumstances provide no basis for the conclusion that the entire Title IV of the Trade Act does not apply, or has never applied, to Cambodia or Laos. Because of the specific functional connection between Section 401 of the Trade Act, which deals with the continued denial and restoration only of nondiscriminatory tariff status, and the Jackson-Vanik amendment as an essential step in the procedure for restoring it, the above mentioned circumstances can affect only the *procedure for restoring* Cambodia's and Laos' nondiscriminatory status, rather than the *actual current market character* of either country as an NME.

Hence, they cannot affect any other provisions or aspects of Title IV, which apply to these countries in their broader concept of "nonmarket economy"or "communist" countries rather than in the narrower one of nonmarket economy countries *without nondiscriminatory status*. Nonapplicability — now or ever — of the *entire* Title IV to Cambodia or Laos would mean, in effect, that neither country is, or ever has been, a "nonmarket economy" or "communist" country.

The claim of nonapplicability of Title IV also is contradicted by the actual implementation of some of its provisions. In fact, both countries were, in the past, included in the quarterly reports on specific aspects of trade with nonmarket economy countries, required in its Sections 410 and 411.[23]

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[23] Both of these reporting requirements have since been repealed: Section 410 by Section 17 of P.L. 104-295 (October 11, 1996) and Section 411 by Section 1401(b)(2) of P.L. 105-362 (November 10, 1998). These more recent repeals, however, do not put into question the applicability of Title IV of the Trade Act—and the NME-country characterization—of either country.