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CRS Report for Congress

The Jackson-Vanik Amendment and Candidate Countries for WTO Accession: Issues for Congress

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Summary

Unconditional most-favored-nation (MFN) status, or in U.S. statutory parlance, normal trade relations (NTR) status, is a fundamental principle of the World Trade Organization (WTO). Under this principle, WTO members are required unconditionally to treat imports of goods and services from any WTO member no less favorably than they treat the imports of like goods and services from any other WTO member country. Under Title IV of the Trade Act of 1974, as amended, most communist or nonmarket-economy countries were denied MFN status unless they fulfilled freedom of emigration conditions as contained in section 402, the so-called Jackson-Vanik amendment, or were granted a presidential waiver of the conditions, subject to congressional disapproval. The statute still applies to many of these countries, even though most have replaced their communist governments. The majority of these countries have joined the WTO or are candidates for accession. Several countries are close to completing the accession process, and Congress could soon face the issue of what to do about their NTR status to ensure that the United States benefits from those accession agreements. During the second session of the 110th Congress, Members may face the issue of whether to extend PNTR to Russia or to other countries acceding to the WTO. This report will be updated as events warrant.

Russia, Kazakhstan, and a number of other former communist states are still subject to the provisions of Title IV of the Trade Act of 1974, as amended, including section 402 (the Jackson-Vanik amendment). The 110th Congress could face the question of whether to enact legislation to repeal the application of the Title IV to all of these countries, thereby authorizing permanent normal trade relations (PNTR) status to fulfill the unconditional most-favored-nation (MFN) obligation under the WTO, or to exercise other options.

MFN/NTR and the GATT/WTO

Most-favored-nation (MFN) treatment is a fundamental principle of the General Agreement on Tariffs and Trade (GATT 1994), which governs trade in goods, of the General Agreement on Trade in Services (GATS), and of the agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). In essence, the principle requires that each WTO member treat the product of another member no less favorably than it treats a like product from any other member. If a member country lowers a tariff or nontariff barrier in its trade with another member, that "concession" must apply to its trade with all other member countries.[1]

The United States grants all but a few countries, namely Cuba and North Korea, normal trade relations (NTR), or MFN, status.[2] In practice, duties on the imports from a country that has not been granted NTR status are set at much higher levels — rates that are several times higher than those from countries that receive such treatment. Thus, imports from a non-NTR country can be at a significant price disadvantage compared with imports from NTR-status countries.

The WTO agreements also require that MFN treatment be applied "unconditionally." However, when a WTO member determines that it cannot, for political or other reasons, accede to this or any other GATT/WTO principle toward a *newly acceding* member, it can "opt-out" of its obligations toward that member by invoking the non-application provision (Article XIII of the WTO or Article XXXV of the GATT). In so doing, the WTO member is declaring that the WTO obligations and mechanisms (e.g, the dispute settlement mechanism) are not applicable in its trade with the new member in question. The United States is the only country to have invoked Article XIII, although a number of other countries invoked Article XXXV before the establishment of the WTO in 1995.[3]

Invoking the non-application clause is a double-edged sword. Although it relieves the member invoking the provision of applying MFN or any other obligations toward the new member, it also denies the benefits and protections that the WTO would provide to the former in its trade with the latter.

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[1] Some exceptions are permitted. For example, the GATT 1994 and the GATS allow members to form free-trade areas and customs unions that extend preferential treatment to trade among the members of the free-trade area and customs union but not to countries outside the arrangement. They also permit developed countries to extend unilateral preferential treatment to developing countries under generalized system of preference (GSP) or similar programs. These exceptions are allowed under specified conditions. A member country may also seek a special waiver in its application of MFN to another member, subject to the approval of at least 3/4 of the WTO membership. The GATS and TRIPs also provide for some MFN exceptions.

[2] The terms *normal trade relation*s (NTR) status and *most-favored-nation* (MFN) status are used interchangeably. MFN was replaced by NTR in U.S. law in 1998 to dispell the notion that MFN conveyed a preferential benefit. However, the term *MFN* is still widely used in the WTO and international trade agreements.

[3] World Trade Organization, *WTO Analytical Index: Guide to WTO Law and Practice*, vol. 1 and vol. 2.

Jackson-Vanik Amendment and Communist and Former Communist Country GATT/WTO Members

In 1951, the United States suspended MFN status to all communist countries (except Yugoslavia) under Section 5 of the Trade Agreements Extension Act. That provision was superceded by Title IV of the Trade Act of 1974.

Section 401 of Title IV requires the President to continue to deny nondiscriminatory status to any country that was not receiving such treatment at the time of the law's enactment on January 3, 1975. In effect, this meant all communist countries, except Poland and Yugoslavia. Section 402 of Title IV, the so-called Jackson-Vanik amendment, denies the countries eligibility for NTR status as long as the country denies its citizens the right of freedom of emigration. These restrictions can be removed if the President determines that the country is in *full compliance* with the freedom-of-emigration conditions set out under the Jackson-Vanik amendment. The Jackson-Vanik amendment also permits the President to waive full compliance with the freedom-of-emigration requirements if he determines that such a waiver would promote the objectives of the amendment; that is, encourage freedom of emigration.[4] While Title IV addresses only freedom of emigration, Congress has used the law to press the subject countries on a number of economic and political issues. Removal of a country from Jackson-Vanik restrictions requires Congress to pass legislation.

Czechoslovakia was an original signatory to the GATT in 1947. In 1951, the United States suspended MFN treatment because it had become communist. Because Czechoslovakia was an original signatory to the GATT and not a newly acceding member, the non-application provision did not apply. Instead, the United States sought and obtained from the other GATT signatories approval for the suspension of MFN treatment.[5]

The United States invoked the non-application provision when Romania and Hungary became GATT signatories in 1971 and 1973, respectively. These restrictions no longer applied after the United States, through legislation, extended unconditional MFN, or permanent normal trade relations (PNTR), status to Czechoslovakia (later the Czech Republic and Slovakia), Hungary, and Romania after the fall of the communist governments in those countries.

The United States granted PNTR to Albania, Bulgaria, and Cambodia before these countries acceded to the WTO, making it unnecessary to invoke the non-application

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[4] For more information on the Jackson-Vanik amendment, see CRS Report 98-545, *The Jackson-Vanik Amendment: A Survey*, by Vladimir N. Pregelj. (Out of print; available on request from the author.)

[5] Pregelj, Vladimir N. *Normalization of U.S. Commercial Relations with East Europe.* In U.S. Joint Economic Committee. *East European Economic Assessment.* A Compendium of Papers. July 10, 1981, p. 671. Cuba was also an original signatory to the GATT. When the United States suspended MFN as part of a total trade embargo on Cuba in 1962, it did not seek such approval, but Cuba has never challenged the suspension of MFN. Pregelj, Vladimir N. CRS Report 75-192. *United States-Cuban Trade Relations: Their Present Legal Status and Action Required For Their Normalization.* August 27, 1975. (Out of print; available on request from the author.)

provision. This was also the case for the former Soviet republics of Estonia, Latvia, and Lithuania.

Mongolia joined the WTO on January 29, 1997, more than two years before the United States granted it PNTR. During that time, the United States invoked the non-application provision. It also invoked the provision with Armenia when it joined the WTO on February 5, 2003, and received PNTR on January 7, 2005, and with Kyrgyzstan when it joined the WTO on December 20, 1998, before receiving PNTR on June 29, 2000. Georgia acceded to the WTO on June 14, 2000, just six months prior to receiving PNTR on December 29, 2000, so the United States did not invoke the non-application provision. Each bill authorizing PNTR for Mongolia, Armenia, Kyrgyzstan, and Georgia contained a " finding" that extending PNTR would enable the United States to avail itself of all rights within the WTO regarding that country. The United States invoked Article XIII also in its trade relations with Vietnam on November 7, 2006, before PNTR for Vietnam went into effect. Currently, the former Soviet republic of Moldova is the only WTO member to which the United States continues to invoke the non-application provision because it has not granted Moldova PNTR for foreign policy reasons.

The Case of China

As with the other communist countries, China was subject to the provisions of the Jackson-Vanik amendment. The United States denied China MFN status until October 1979, when it was granted conditional MFN under the statute's presidential waiver authority. China acceded to the WTO on December 11, 2001. Congress passed legislation (P.L. 106-286) removing the Jackson-Vanik requirement from U.S. trade with China and authorizing the President to grant PNTR to China, which he did on January 1, 2002. However, in the legislation, Congress linked the granting of PNTR to U.S. acceptance of conditions for accession to the WTO. It states that prior to making a determination on granting PNTR, "the President shall transmit to Congress a report certifying that the terms and conditions for the accession" of China to the WTO "are at least equivalent to those agreed to" in the bilateral agreement the United States and China reached as part of the accession process.[6]

China's bilateral agreement with the United States, which is contained in the final accession agreement, contains provisions for special safeguard procedures (codified in U.S. law as section 402 of the Trade Act of 1974) to be used when imports cause or threaten to cause market disruption in the United States. It also provides for a separate safeguard procedure in the case of surges in imports of textiles and wearing apparel from China, as well as special antidumping and countervailing duty procedures. All of these provisions have time limits. The legislation authorizing PNTR for China also provided for the establishment of a congressional-executive commission to monitor human rights

[6] As part of the WTO accession process, candidate countries must complete bilateral negotiations with any WTO member that wishes to do so. The agreement obligates the acceding country to change laws or practices to meet the needs of the specific WTO member. All of the bilateral agreements plus the agreement with a WTO Working Party are combined into a protocol of accession laying down the conditions for the country to enter the WTO.

protection in China to replace Congress's focus on this issue that occurred during the annual NTR renewal debate.[7]

Prospective WTO Accessions

In testimony before the House Ways and Means Committee and the Senate Finance Committee, USTR Portman stated that Russia, Ukraine, Vietnam and Kazakhstan are close to completing their agreements on accession to the WTO and that Congress would soon be asked to repeal the Title IV restrictions on those countries.[8] Subsequently, the United States granted Ukraine PNTR after the House passed (417-2) H.R. 1053 on March 8, 2006, the Senate passed (unanimous consent) it on March 9, and President Bush signed it (P.L. 109-25) on March 23. On December 8, 2006, the House (212-184) and the Senate (79-9) passed legislation granting Vietnam PNTR status. President Bush signed it into law on December 20, 2006. Several other countries that are still subject to the restrictions have also applied for membership to the WTO and are at various stages of the accession process: Azerbaijan, Belarus, Tajikistan, and Uzbekistan.

Congress usually has no legislative role in the accession of countries to the WTO. However, the legislative requirement for repeal of Title IV provides a role, albeit indirectly, in the cases of the above-mentioned affected countries by giving Congress leverage on the negotiation of conditions for WTO accession.

Congress has several options. It could repeal the restrictions before the country(ies) actually enter(s) the WTO, completely separating the issues of Title IV repeal and WTO accession. This is the course that Congress has followed in most cases to date and would allow the United States to fulfill the unconditional MFN requirement prior to the country acceding to the WTO. Many of the countries in question, Russia in particular, view the Jackson-Vanik requirements and the rest of the Title IV restrictions as a cold war relic that have no applicability to their current emigration policies and, more generally, to the types of governments they now have. They assert that their countries should be treated as normal trade partners and, therefore, that the restrictions should be removed unconditionally. On the other hand, some Members of Congress have raised concerns regarding trade, economic, and other policies and practices of one or more of the countries and may view the PNTR as leverage in addressing these issues.

A second option would be for Congress to link the granting of PNTR with the country's accession to the WTO. For example, Congress could follow the model established with PNTR for China by requiring the President to certify that the conditions under which the country is entering the WTO are at least equivalent to the conditions that the United States agreed to under its bilateral accession agreement with the country. It can be argued that in this way, Congress helped define, at least indirectly, the conditions under which China entered the WTO. However, the candidate countries would probably bridle at such treatment, asserting that they would be asked to overcome hurdles that are

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[7] For more information, see CRS Report RL33536, *China-U.S. Trade Issues*, by Wayne M. Morrison.

[8] Transcript of Senate Finance Committee hearing on the Administrations Trade Agenda for 2006, February 16, 2006.

not applied to most of the other acceding countries, especially countries not subject to Jackson-Vanik.

A third option would for Congress to not repeal the Title IV at all, as is the case currently with Moldova. This option would send a strong message to the partner country of congressional concerns or discontent with its policies or practices without preventing the country's entrance into the WTO. At the same time, the United States would have to invoke the non-applicability provision (Article XIII) in its trade relations with that country. The United States would not benefit from the concessions that the partner country made in order to accede to the WTO. The United States would not be bound by WTO rules in its trade relations with the country, nor would that country be so bound in its trade with the United States. For example, the WTO dispute settlement body mechanism would not be available to the two countries in their bilateral trade relationship.

In determining which option to exercise, Congress faces the balance of costs and benefits of each. In addition, how Congress treats each of the countries relative to the others could have implications for U.S. relations with them. For example, Russia might consider it a serious affront, if conditions for its obtaining PNTR are less favorable than were given to Ukraine.