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105TH CONGRESS, *1st Session* | SENATE | REPORT 105–82

CLARIFYING THE DESIGNATION OF NORMAL TRADE RELATIONS

SEPTEMBER 15, 1997.—Ordered to be printed

Mr. ROTH, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 747]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, to which was referred the bill (S. 747) to amend trade laws and related provisions to clarify the designation of normal trade relations, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. BACKGROUND

Since the 18th century, the policy underlying trade relations between the United States and other countries has rested on the principle of nondiscrimination—*i.e.,* that the United States will give equal treatment, in terms of tariff rates, etc., to the same product it imports from any other country. In return, other countries apply the same tariff treatment to products they import from the United States as they apply to imports from other countries. More recently, the principle has also been extended to areas beyond just trade in goods (*e.g.,* trade in services).

The traditional term for this principle of nondiscrimination is "most-favored-nation," or MFN treatment. This term is rooted in a very old concept of international law, which states that in trade re-

lations, a country will provide the same trade treatment under its laws to all countries as it provides to the "most-favored nation."[1]

Although the term harkens to a hypothetical most-favored nation, in fact, MFN status does not provide any special position or preferential treatment to other countries. Rather, MFN refers to trade treatment that the United States normally provides to all but six countries in the world[2] and denotes the ordinary, not the exceptional, trading relationship between the United States and the vast majority of other countries.

II. SUMMARY OF THE BILL

Section 1(a) of the bill sets out the following four Congressional findings:

1. Since the 18th century, the principle of nondiscrimination among countries with which the United States has trade relations, commonly referred to as "most-favored-nation" treatment, has been a cornerstone of U.S. trade policy.
2. Although the principle remains firmly in place as a fundamental concept in U.S. trade relations, the term "most-favored-nation" is a misnomer which has led to public misunderstanding.
3. It is neither the purpose nor the effect of the most-favored-nation principle to treat any country as "most favored." Rather, the principle reflects the intention to confer the same trade benefits on a country that are conferred on any other country—*i.e.,* that there is no intention to discriminate among trading partners.
4. The term "normal trade relations" is a more accurate description of the principle of nondiscrimination as it applies to the tariffs applicable generally to imports from U.S. trading partners—*i.e.,* the general rates of duty set forth in column 1 of the Harmonized Tariff Schedule of the United States (HTSUS).

Section 1(b) of the bill sets forth a sense of the Congress that U.S. laws, treaties, agreements, executive orders, directives, and regulations should more accurately reflect the underlying principles of U.S. trade policy. Therefore, the term "most-favored-nation" should, where appropriate, be changed to "normal trade relations."

Section 2 of the bill amends the following statutory provisions to reflect the change of the term "most-favored-nation" to "normal trade relations":

1. The heading for section 251 of the Trade Expansion Act of 1962 (19 U.S.C. 1881);
2. Section 402 of the Trade Act of 1974 (19 U.S.C. 2432);
3. Section 601(9) of the Trade Act of 1974 (19 U.S.C. 2481(9));

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[1] A comprehensive history of the MFN principle is described in a July 1973 report of the Committee on Finance (U.S. Senate Committee on Finance, Executive Branch GATT Study No. 9, *The Most-Favored-Nation Provision,* 93d Congress, 1st Session (July 1973)).

[2] As of September 11, 1997, these countries were: Afghanistan; Cuba; Laos; North Korea; Vietnam; and Yugoslavia (Serbia and Montenegro).

4. Section 302(a)(3)(C) of the United States-Canada Free Trade Agreement Implementation Act of 1988 (19 U.S.C. 2112 (note));

5. Section 202(n) of the North American Free Trade Agreement Implementation Act (19 U.S.C. 3332(n));

6. Section 2(c)(11) of the Support for East European Democracy (SEED) Act of 1989 (22 U.S.C. 5401(c)(11)); and

7. Section 103(4) of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5713(4)).

Section 3 of the bill specifies that the Act will have no effect on the meaning of any provision of law, Executive order, Presidential proclamation, rule, regulation, delegation of authority, other document, or treaty or other international agreement of the United States relating to the MFN principle, which was in effect on or was to become effective on or after the effective date of the Act. Rather, all of the foregoing, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law.

III. General Explanation

A. Senate Action

On June 27, 1996, all 20 Members of the Senate Committee on Finance cosponsored S. 1918, which, in substance, is identical to S. 747. Although S. 1918 passed the Senate on September 10, 1996, by unanimous consent, the House did not consider the legislation before the conclusion of the 104th Congress. This legislation was reintroduced as S. 747 in the 105th Congress on May 15, 1997, with the cosponsorship of 19 Members of the Committee on Finance.

B. Committee Views

The Committee believes that the term "most-favored-nation" treatment has become a source of confusion in describing the principle of nondiscrimination in trade relations with other countries and has unnecessarily complicated the conduct of American foreign trade policy. MFN is, in fact, a misnomer in that it inaccurately implies that the United States confers some special trading privilege or preferential treatment on countries to which it applies the nondiscrimination principle.

Despite its name, MFN is not a special trading privilege or reward, nor is it the most favorable trade treatment that the United States gives its trading partners. Rather, MFN refers to the normal trade treatment that the United States gives to nearly every country in the world. Because there are only six countries in the world to which the United States does not give MFN status, MFN denotes the ordinary, not the exceptional, trading relationship. Furthermore, the United States extends *better* than MFN treatment to 150 countries and territories, through the Generalized System of Preferences, the Caribbean Basin Initiative, the Andean Trade Preferences Act, the United States-Israel Free Trade Agreement, and the North American Free Trade Agreement.

In order to correct the misconception created by the term, "most-favored-nation," the Committee believes that the term should be changed. It is the Committee's view that the term "normal trade relations" more accurately describes the principle of nondiscrimination in trade relations and clarifies that this principle under U.S. law denotes the ordinary and normal, rather than the exceptional, trade relationship that the United States has with nearly every country in the world.

It is not the Committee's intention to alter U.S. international rights or obligations by virtue of this legislation. MFN is a term with a long history of application and interpretation. Therefore, the changes effected by this legislation merely modify the language, not the content of U.S. trade policy in order to make it more accurate and comprehensible.

Accordingly, the Committee strongly supports enactment of S. 747 to change the term "most-favored-nation" to "normal trade relations" in U.S. law and regulation, wherever appropriate.

IV. Vote of the Committee

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that S. 747 was ordered favorably reported unanimously by voice vote on September 11, 1997.

V. Budgetary Impact

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office stating that the bill would have no budgetary impact:

CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, D.C. 20515

June E. O'Neill
Director

September 12, 1997

Honorable William V. Roth, Jr.
Chairman
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Congressional Budget Office has reviewed S. 747, a bill to amend trade laws and related provisions to clarify the designation of normal trade relations, as ordered reported by the Senate Committee on Finance on September 11, 1997. S. 747 would change the terminology used in existing trade laws by substituting the term 'normal trade relations' for the term 'most favored nation', where appropriate. CBO estimates that the bill would have no budgetary effect over fiscal years 1997 through 2007. S. 747 contains no new private-sector or intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA), and would not impose any costs on state, local, or tribal governments.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Alyssa Trzeszkowski, who can be reached at 266-2720.

Sincerely,

for June E. O'Neill

cc: Honorable Daniel P. Moynihan
Ranking Minority Member

VI. Regulatory Impact

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will have no impact on the personal privacy of individuals, and will result in no significant additional paperwork.

VII. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TRADE EXPANSION ACT OF 1962

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TITLE II—TRADE AGREEMENTS

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Chapter 6—General Provisions

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SEC. 251. [MOST-FAVORED-NATION PRINCIPLE] *NORMAL TRADE RELATIONS*.

Except as otherwise provided in this title, in section 350(b) of the Tariff Act of 1930, or in section 401(a) of the Tariff Classification Act of 1962, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under this title or section 350 of the Tariff Act of 1930 shall apply to products of all foreign countries, whether imported directly or indirectly.

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TRADE ACT OF 1974

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TITLE IV—TRADE RELATIONS WITH COUNTRIES NOT CURRENTLY RECEIVING NONDISCRIMINATORY TREATMENT

SEC. 401. EXCEPTION OF THE PRODUCTS OF CERTAIN COUNTRIES OR AREAS.

Except as otherwise provided in this title, 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 numbered 1 of the Tariff Schedules of the United States on the date of the enactment of this Act.

SEC. 402. FREEDOM OF EMIGRATION IN EAST-WEST TRADE.

(a) To assure the continued dedication of the United States to fundamental human rights, and notwithstanding any other provision of law, on or after the date of the enactment of this Act products from any nonmarket economy country shall not be eligible to receive nondiscriminatory treatment [(most-favored-nation treatment)] *(normal trade relations)*, such country shall not participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly, and the President of the United States shall not conclude any commercial agreement with any such country, during the period beginning with the date on which the President determines that such country

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

(2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever; or

(3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice,

and ending on the date on which the President determines that such country is no longer in violation of paragraph (1), (2), or (3).

(b) After the date of the enactment of this Act, (A) products of a nonmarket economy country may be eligible to receive non-discriminatory treatment [(most-favored-nation treatment)] *(normal trade relations)*, (B) such country may participate in any program of the Government of the United States which extends credits or credit guarantees or investment guarantees, and (C) the President may conclude a commercial agreement with such country, only after the President has submitted to the Congress a report indicating that such country is not in violation of paragraph (1), (2), or (3) of subsection (a). Such report with respect to such country shall include information as to the nature and implementation of emigration laws and policies and restrictions or discrimination applied to or against persons wishing to emigrate. The report required by this subsection shall be submitted initially as provided herein and, with current information, on or before each June 30 and December 31 thereafter so long as such treatment is received, such credits or guarantees are extended, or such agreement is in effect.

(c)(1) During the 18-month period beginning on the date of the enactment of this Act, the President is authorized to waive by Executive order the application of subsections (a) and (b) with respect to any country, if he reports to the Congress that—

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TITLE VI—GENERAL PROVISIONS

SEC. 601. DEFINITIONS.

For purposes of this Act—

(1) Me term "duty" includes the rate and form of any import duty, including but not limited to tariff-rate quotas.

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(9) The term "nondiscriminatory treatment" means [most-favored-nation treatment] *trade treatment based on normal trade relations (known under international law as most-favored-nation treatment)*.

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UNITED STATES-CANADA FREE-TRADE AGREEMENT IMPLEMENTATION ACT OF 1988

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SEC. 302. RELIEF FROM IMPORTS.

(a) RELIEF FROM IMPORTS OF CANADIAN ARTICLES.—

(1) A petition requesting action under this section for the purpose of adjusting to the obligations of the United States under the Agreement may be filed with the United—States International Trade Commission (hereafter in this section refereed to as the "Commission") by an entity, including a trade association, firm, certified or recognized union, or group of workers, which is representative of an industry. The Commission shall transmit a copy of any petition flied under this paragraph to the United States Trade Representative.

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(3)(A) By no later than the date that is 30 dew after the date on which the President receives the report of the Commission containing an affirmative determination made by the Commission under paragraph (2)(A), the President shall provide relief from imports of the article originating in Canada that is the subject of such determination to the extent that, and for such time (not to exceed 3 years) as the President determines to be necessary to remedy the injury found by the Commission.

(B) The President is not required to provide import relief by reason of this paragraph if the President determines that the provision of such import relief is not in the national economic interest.

(C) The import relief that the President is authorized to provide by reason of this paragraph with respect to an article originating in Canada is limited to—

(i) the suspension of any further reductions provided for under the Agreement in the duty imposed on such article originating in Canada,

(ii) an increase in the rate of duty imposed on such article originating in Canada to a level that does not exceed the lesser of—

(I) [the most-favored-nation rate of duty] *the general subcolumn of the column rate of duty set forth in the Harmonized Tariff Schedule of the United States* that is imposed by the United States on such article from any other foreign country at the time such import relief is provided, or

(II) [the most-favored-nation rate of duty] *the general subcolumn of the column rate of duty set forth in*

the Harmonized Tariff Schedule of the United States that is imposed by the United Sates on such article from any other foreign country on the day before the date on which the Agreement enters into force, or

(iii) in the case of a duty applied on a seasonal basis to such article originating in Canada, an increase in the rate of duty imposed on such article originating in Canada to a level Chat does not exceed [the most-favored-nation rate of duty] *the general subcolumn of the column rate of duty set forth in the Harmonized Tariff Schedule of the United States* imposed by the United Sates on such article originating in Canada for the corresponding season immediately prior to the date on which the Agreement enters into force.

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NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT

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TITLE II—CUSTOMS PROVISIONS

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SEC. 202. RULES OF ORIGIN.

(a) ORIGINATING GOODS.—

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(n) ORIGIN OF AUTOMATIC DATA PROCESSING GOODS.—Notwithstanding any other provision of this section, when the NAFTA countries apply the [most-favored-nation] rate of duty described in paragraph 1 of section A of Annex 308.1 of the Agreement to a good provided for under the tariff provisions set out in Table 308.1.1 of such Annex, the good shall, upon importation from a NAFTA country, be deemed to originate in the territory of a NAFTA country for purposes of this section.

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SUPPORT FOR EAST EUROPEAN DEMOCRACY (SEED) ACT OF 1989

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SEC. 2. SUPPORT FOR EAST EUROPEAN DEMOCRACY (SEED) PROGRAM.

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(c) SEED ACTIONS.—Assistance and other activities under the SEED Program (which may be referred to as "SEED Actions") shall include activities such as the following:

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(11) [MOST FAVORED NATION TRADE STATUS] *NORMAL TRADE RELATIONS.*—The granting of temporary or permanent nondiscriminatory treatment [(commonly referred to as "most favored nation status")] to the products of an East European country through the application of the criteria and procedures established by section 2432 of Title 19.

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UNITED STATES-HONG KONG POLICY ACT OF 1992

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SEC. 103. COMMERCE BETWEEN UNITED STATES AND HONG KONG.

It is the sense of the Congress that the following, which are based id part on the relevant provisions of the Joint Declaration, are and should continue after June 30, 1997, to be the policy of the United States with respect to commerce between the United States and Hong Kong:

(1) The United States should seek to maintain and expand economic and trade relations with Hong Kong and should continue to treat Hong Kong as a separate territory in economic and trade matters, such as import quotas and certificates of origin.

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(4) The United States should continue to grant the products of Hong Kong nondiscriminatory trade treatment [(commonly referred to as "most-favored-nation status")] by virtue of Hong Kong's membership in the General Agreement on Tariffs and Trade.

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