

APPROVING THE EXTENSION OF NONDISCRIMINATORY TREATMENT
(MOST FAVORED NATION TREATMENT) TO THE PRODUCTS OF THE MONGOLIAN PEOPLE'S REPUBLIC

OCTOBER 15 (legislative day, SEPTEMBER 19), 1991.—Ordered to be printed

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

REPORT

[To accompany S.J. Res. 168]

The Committee on Finance, to which was referred the joint resolution (S.J. Res. 168) to approve the extension of nondiscriminatory treatment to the products of the Mongolian People's Republic, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

I. SUMMARY

S.J. Res. 168 would approve the extension of nondiscriminatory (most-favored-nation ("MFN")) treatment to products imported into the United States from the Mongolian People's Republic ("Mongolia"). The extension of reciprocal MFN treatment was one of the principal provisions of the trade agreement negotiated between the United States and Mongolia and signed on January 23, 1991. On June 25, 1991, the President formally submitted the agreement and accompanying side letters to the Congress for its consideration, along with his proclamation extending nondiscriminatory treatment to imports from Mongolia.

Under section 405(c) of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990 (Public Law 101-382), the trade agreement and proclamation may take effect only if the House and Senate adopt a joint resolution of approval.

On July 11, 1991, the House Committee on Ways and Means Subcommittee on Trade ordered favorably reported H.J. Res. 281, the companion to S.J. Res. 168.

II. GENERAL EXPLANATION

A. THE STATUTORY FRAMEWORK

Title IV of the Trade Act of 1974, as amended, authorizes the President to extend MFN treatment to non-market economies not accorded MFN status if two conditions are met: (1) compliance with the freedom-of-emigration provisions under section 402 of the Trade Act of 1974 (commonly referred to as the Jackson-Vanik amendment); and (2) conclusion of a bilateral commercial agreement under section 405 of the Trade Act of 1974 providing reciprocal nondiscriminatory treatment. Section 404 of the Trade Act of 1974 stipulates that MFN treatment shall remain in effect only as long as the bilateral commercial agreement is in effect. Section 404 also provides that the President may suspend or withdraw MFN treatment at any time.

(1) *Compliance with freedom-of-emigration provisions.*—Section 402 of Trade Act of 1974 (the Jackson-Vanik amendment) provides that products from certain non-market economies may not be accorded MFN status, and the country may not participate in U.S. financial credit or guarantee programs if the President determines that the country: (a) denies its citizens the right or opportunity to emigrate; (b) imposes more than a nominal tax on visas or other documents required for emigration; or (c) imposes more than a nominal levy, fine, fee, or other charge on any citizen as a consequence of the desire to emigrate.

A country may become eligible for MFN treatment and U.S. financial programs and may conclude a commercial agreement only if the President submits a report to Congress indicating that the country does not violate these conditions.

Alternatively, the President may waive the Jackson-Vanik requirements if he reports to Congress that a waiver will substantially promote the objectives of the law and if the President has received assurances that the emigration practices of the country will henceforth lead substantially to the achievement of the objectives of the freedom-of-emigration provisions. The waiver authority may be extended by Presidential action for one-year periods, subject to Congressional review.

(2) *Bilateral commercial agreement.*—Under section 405(b) of the Trade Act of 1974, all bilateral commercial agreements must:

- (a) provide that the agreement is subject to termination or suspension for national security reasons;
- (b) include safeguards against market disruption;
- (c) provide for the protection of intellectual property;
- (d) include dispute settlement provisions;
- (e) include arrangements for the promotion and facilitation of trade; and
- (f) provide for consultations to review the agreement and the status of bilateral commercial relations.

The agreement must be limited to an initial period of three years. The agreement is, however, renewable for additional three-year periods if a satisfactory balance of concessions in trade and services has been maintained during the life of the agreement and if the President determines that actual or foreseeable reductions in

U.S. tariffs and non-tariff barriers to trade resulting from multilateral negotiations are satisfactorily reciprocated by the other party to the agreement.

B. PRESIDENTIAL ACTION AND CONGRESSIONAL CONSIDERATION

(1) *Presidential action.*—On January 23, 1991, the President waived the application of sections 402 (a) and (b)—the Jackson-Vanik requirements—with respect to Mongolia upon his determination that such a waiver would substantially promote the Act's objectives relating to freedom of emigration. On June 3, 1991, the President notified Congress of his intention to extend the waiver for Mongolia for the year beginning July 4, 1991. The President reported that, as of January 15, 1991, Mongolian citizens no longer needed to obtain permission from the Government to travel abroad, and all limitations on passport eligibility were lifted. The President also noted that the number of Mongolians traveling abroad had nearly doubled from 13,000 in 1989 to 25,000 in 1990.

On January 23, 1991, U.S. Trade Representative (USTR) Carla Hills and Mongolian Minister of Trade and Industry Sed-Ochiryn Bayarbaatar signed a bilateral trade agreement. Accompanying side letters concerning the promotion of tourism and the establishment of commercial representations are also integral parts of the agreement, as well as a letter from Ambassador Hills to Minister Bayarbaatar stating that the United States agrees to give due consideration to Mongolia's request that it be designated a beneficiary under the Generalized System of Preferences (GSP). The agreement, side letters, and a proclamation proclaiming MFN treatment for Mongolia were submitted formally to the Congress on June 25, 1991.

(2) *Congressional consideration.*—Sections 405(c) and 407(c) of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990, provide that a trade agreement and the Presidential proclamation granting MFN status may take effect only after the House and Senate adopt a joint resolution of approval. The joint resolution is subject to the "fast-track" implementing procedures of the House and Senate under section 151 of the Trade Act of 1974, as amended. Under section 151, the approval resolution is automatically referred to the Committee on Finance. No amendments are in order. The procedures of section 151 provide for final Congressional action on an approval resolution within 60 session days after its introduction (or 90 days if the resolution is a revenue measure).

On June 25, 1991, S.J. Res. 168 and H.J. Res. 281—identical resolutions approving the proclamation of nondiscriminatory treatment to imports of products from Mongolia—were introduced in the Senate and House, respectively. S.J. Res. 168 was referred to the Senate Committee on Finance and H.J. Res. 281 to the House Committee on Ways and Means. On June 28, 1991, the Committee on Finance issued a press release requesting public comment on the agreement. The Committee received one comment urging it to approve the extension of MFN treatment to Mongolia.

On July 11, 1991, the Committee on Ways and Means Subcommittee on Trade ordered H.J. Res. 281 favorably reported to the full Committee.

C. SUMMARY OF THE U.S.-MONGOLIAN TRADE AGREEMENT

The U.S.-Mongolian trade agreement contains numerous provisions designed to facilitate two-way trade between the two countries. The agreement provides that the United States and Mongolia will accord each other MFN treatment with respect to customs duties and charges, the method of payment of imports and exports, all rules and formalities in connection with importation and exportation, taxes and internal charges and other laws and regulations affecting the sale, distribution and storage of products. The countries also agreed to accord to the products of the other MFN treatment with respect to the allocation of and access to the currency needed to pay for such imports.

The agreement also obligates each country to maintain a "satisfactory balance of market access opportunities." Under the agreement, trade between the two countries is to be conducted by means of contracts concluded as exercises of independent commercial judgment on the basis of nondiscrimination and customary commercial considerations. In addition, neither country will require or encourage barter or countertrade. Mongolia also agrees to accede to the Convention Establishing the Customs Cooperation Council and the International Convention on the Harmonized Commodity Description and Coding System.

Additional provisions in the agreement are designed to promote trade and facilitate transactions between the two countries. Included in the agreement are measures that:

- (a) facilitate the holding of trade promotion events;
- (b) ease the establishment of both government and private sector commercial offices, the direct hire of employees, importation of office equipment, access to office space and living accommodations, employment of agents and distributors, the stocking and distribution of samples and replacement parts, advertising and market research;
- (c) improve the transparency of laws, regulations and rulings that affect trade, investment and other commercial matters;
- (d) require that trade between the two countries be conducted in U.S. dollars or other convertible currencies, unless the parties to individual transactions agree otherwise;
- (e) bind the countries not to restrict the export of convertible currencies or deposits obtained in connection with trade in goods and services and require the parties to provide nondiscriminatory treatment with respect to a range of financial transactions;
- (f) provide adequate and effective protection of intellectual property;
- (g) provide procedures for the settlement of disputes and guarantee companies and nationals of each country access to the other's courts and administrative bodies; and
- (h) provide for periodic consultations to review the operation of the agreement.

In addition, three sets of side letters that are an integral part of the trade agreement were negotiated and exchanged between the two countries. In the first side letter, Mongolia requested that the United States designate it a beneficiary country under the GSP. In

response, the United States agreed to give the request due consideration. In the second exchange, Mongolia stated its intention to liberalize the procedures for establishing commercial representations. The third letter sets forth agreed terms for the operation of non-profit tourism promotion offices and the treatment of private sector tourism offices.

D. U.S.-MONGOLIAN TRADE AND IMPACT OF TRADE AGREEMENT

(1) *U.S.-Mongolian trade.*—The volume of U.S. trade with Mongolia has remained low. Over the past four years, two-way trade has averaged \$1.6 million annually. In 1990, U.S. exports to Mongolia totaled \$94,000, up from \$29,000 in 1988. Leading exports included burglar and fire alarms, scientific and measuring equipment, and magnetic tapes. U.S. imports from Mongolia in 1990 reached \$1.8 million. Chief imports were animal hair (valued at \$1.2 million) and toluene (\$500,000).

(2) *Impact of the trade agreement.*—If MFN status is granted to Mongolia, the import duty on camel hair, by far our largest import from Mongolia, will drop by 80 percent—from 55 cents per kilogram to 11 cents per kilogram. There is no duty on imports of toluene, the second largest import item from Mongolia.

The Committee expects that the benefits of the trade agreement would not, however, be one-way. Exports from the United States to Mongolia will also benefit from MFN tariff rates.

In addition, the Committee expects that increased Mongolian exports to the United States will generate hard currency and provide the means for that country to import more goods necessary to improve its productivity and standard of living. Moreover, many other provisions of the agreement are designed to facilitate transactions between United States and Mongolian companies and should lead to increased U.S. exports to and investment in Mongolia. The Committee notes with particular enthusiasm the commitments Mongolia has made to provide strong and effective intellectual property protection.

The Committee believes that prompt enactment of the U.S.-Mongolian trade agreement is in the best interest of the United States. The Committee hopes that the agreement will help spur the development of two-way trade, which is currently at an almost negligible level. In addition, the Committee notes that Mongolia has just recently undertaken major economic reforms aimed at developing a market-based system, and has just observed the first anniversary of its first free elections in 70 years. The Committee recognizes that Mongolia will require time and assistance in transforming its economy, building on its new democratic foundations, and developing closer ties with the West.

The Committee believes that U.S. companies can help Mongolia attain its economic development goals and assist in that country's transformation. The prompt enactment of the U.S.-Mongolian trade agreement is an important step toward that end. Accordingly, the Committee strongly supports enactment of S.J. Res. 168 and the extension of MFN treatment to Mongolia.

III. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that S.J. Res. 168 was ordered favorably reported by voice vote.

IV. BUDGETARY IMPACT OF THE BILL

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 regarding the budgetary impact of the bill:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 25, 1991.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S.J. Res. 168, a joint resolution approving the extension of most-favored-nation (MFN) status to the Mongolian People's Republic, as ordered reported by the Senate Committee on Finance on July 25, 1991. The CBO estimates that extending MFN status to Mongolia would cause a negligible reduction in federal government revenues in fiscal year 1992.

Under title IV of the Trade Act of 1974, MFN status may not be conferred on a country with a nonmarket economy if that country maintains restrictive emigration policies. Because of this stipulation, Mongolia does not currently qualify for MFN status. Under present law, however, the President may waive this prohibition on an annual basis if he certifies that granting MFN status would promote freedom of emigration in that country. The President first waived this stipulation on January 23, 1991.

On June 3, 1991, the President notified Congress of his intention to extend the waiver of the application of title IV of the Trade Act of 1974 with respect to the Mongolia for one year. On June 25, 1991, the President transmitted to Congress the trade agreement according MFN status to Mongolia. S.J. Res. 168 approves the extension of MFN status to Mongolia. Granting Mongolia MFN status would result in a loss of customs duties because imports from Mongolia would be subject to lower tariff rates. The CBO assumes that the trade agreement between the United States and Mongolia would be implemented in fiscal year 1992 and estimates that the reduction in federal customs duties would be negligible.

PAY-AS-YOU-GO CONSIDERATIONS

(By fiscal year, in millions of dollars)

	1992	1993	1994	1995
Changes in receipts.....	(1)	0	0	0
Changes in outlays.....	(2)	(2)	(2)	(2)

¹ Revenue loss of less than \$500,000

² Not applicable

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell of the Tax Analysis Division at 226-2720.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

V. REGULATORY IMPACT OF THE BILL

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 not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

VI. CHANGES IN EXISTING LAW

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the resolution, S.J. Res. 168, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 19—CUSTOMS DUTIES

CHAPTER 18—IMPLEMENTATION OF THE HARMONIZED TARIFF SCHEDULE

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES (1991) ANNOTATED FOR STATISTICAL REPORTING PURPOSES

GENERAL NOTES

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(b) *Rate of Duty Column 2.* Notwithstanding any of the foregoing provisions of this note, the rates of duty shown in column 2 shall apply to products, whether imported directly or indirectly, of the following countries and areas pursuant to section 401 of the Tariff Classification Act of 1962, to section 231 or 257(e)(2) of the Trade Expansion Act of 1962, to section 404(a) of the Trade Act of 1974 or to any other applicable section of law, or to action taken by the President thereunder.

Afghanistan
Albania
Bulgaria
Cuba
Estonia
German Democratic Re-
public

Kampuchea
Laos
Latvia
Lithuania
【Mongolia】

North Korea
Romania
Union of Soviet Socialist
Republics
Vietnam

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