

**APPROVING THE EXTENSION OF NONDISCRIMINATORY
TREATMENT (MOST-FAVORED-NATION TREATMENT) TO
THE PRODUCTS OF ROMANIA**

OCTOBER 5 (legislative day, SEPTEMBER 30), 1992.—Ordered to be printed

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

R E P O R T

[To accompany S.J. Res. 320]

The Committee on Finance, to which was referred the joint resolution (S.J. Res. 320) to approve the extension of nondiscriminatory treatment to the products of Romania, having considered the same, reports favorably thereon without amendment and recommends that the joint resolution do pass.

I. SUMMARY

S.J. Res. 320 would approve the extension of nondiscriminatory (most-favored-nation ("MFN")) treatment to products imported into the United States from Romania. The extension of reciprocal MFN treatment was one of the principal provisions of the trade agreement negotiated between the United States and Romania and signed on April 3, 1992. On June 23, 1992, the President formally submitted the agreement and accompanying side letters to the Senate for its consideration, along with his proclamation extending nondiscriminatory treatment to imports from Romania.

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 29, 1992, the House Committee on Ways and Means ordered favorably reported H.J. Res. 512, the House companion to S.J. Res. 320.

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 countries not receiving such treatment as of the date of enactment of the 1974 Trade Act (January 3, 1975) 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 the Trade Act of 1974 (the Jackson-Vanik amendment) provides that products from countries covered by Title IV 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, 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. PREVIOUS EXTENSION OF MFN TREATMENT TO ROMANIA

The Jackson-Vanik requirements for Romania were first waived on April 24, 1975 and extended annually from 1976 through 1987. After the first Jackson-Vanik waiver in 1975, Congress approved a trade agreement conforming to the requirements of Title IV. Romania was accorded MFN treatment on August 3, 1975, when that trade agreement entered into force. The trade agreement and MFN continued in effect for Romania until 1988 when Romania renounced the trade agreement in anticipation of Congressional action to suspend Romania's MFN status because of emigration and human rights concerns. Romania ceased receiving MFN treatment from the United States on July 3, 1988.

C. PRESIDENTIAL ACTION AND CONGRESSIONAL CONSIDERATION IN 1992

(1) *Presidential action*

On August 17, 1992, the President waived the application of sections 402 (a) and (b)—the Jackson-Vanik requirements—with respect to Romania upon his determination that such a waiver would substantially promote the Act's objectives relating to freedom of emigration. On June 3, 1992, the President notified Congress of his intention to extend the waiver for Romania for the year beginning July 4, 1992.

In his report to the Congress, the President stated that, since the Jackson-Vanik waiver was issued in August 1991, Romania had continued to respect freedom of emigration. The President noted that passports are obtainable upon application and the payment of normal fees. The President noted further that, although Romanians must present proof that they have settled their debts in Romania in order to emigrate, this requirement did not measurably impede emigration.

A bilateral trade agreement was signed on April 3, 1992. Accompanying side letters concerning the protection of intellectual property, the promotion of tourism, and access to information on companies and individuals involved in foreign trade are also integral parts of the agreement. The agreement, side letters, and a proclamation proclaiming MFN treatment for Romania were submitted formally to the Senate on June 23, 1992.

(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 (Public Law 101-382), 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 that is a revenue measure within 90 session days.

H.J. Res. 512 and S.J. Res. 320—identical resolutions approving the proclamation of nondiscriminatory treatment to imports of products from Romania—were introduced in the House (on June 22, 1992) and in the Senate (on June 23, 1992), respectively. S.J. Res. 320 was referred to the Senate Committee on Finance and H.J. Res. 512 to the House Committee on Ways and Means. On July 2, 1992, the Committee on Finance issued a press release requesting public comments on the agreement by July 17, 1992. The Committee received 28 comments, all but two in favor of approving MFN for Romania.

On July 29, 1992, the Committee on Ways and Means ordered H.J. Res. 512 favorably reported to the full House.

D. SUMMARY OF THE U.S.-ROMANIAN TRADE AGREEMENT

The U.S.-Romanian trade agreement contains numerous provisions designed to facilitate two-way trade between the two countries. The agreement provides that the United States and Romania will apply to each other the provisions of the General Agreement on Tariffs and Trade and accord each other nondiscriminatory 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 commits both countries to maintain a "satisfactory balance of market access opportunities" and to take "appropriate measures" to encourage the expansion of trade. 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.

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 review of the agreement by the Joint American-Romanian Economic Commission.

In addition, three side letters that are an integral part of the trade agreement were negotiated and exchanged between the two countries. Romania and the United States agreed on procedures for the establishment of non-profit tourism promotion offices and for the treatment of private sector tourism offices. A second side letter sets out detailed commitments regarding intellectual property rights. The third letter concerns access to information on companies and individuals involved in foreign trade and other information that would be useful in developing business contacts.

An article-by-article summary of the trade agreement follows:

Article I.—Article I provides that the United States and Romania shall apply to each other the provisions of the General Agreement on Tariffs and Trade (GATT) and accord most-favored-nation (MFN) treatment to each other's products. In addition, both countries reaffirm their participation in the GATT Code Agreements to which both are presently signatories (Standards, Customs Valuation, Licensing, Aircraft, and Bovine Meat) and commit to participate in multilateral negotiations aimed at improving the existing agreements, and any other GATT negotiations. Each country will also accord to the products and services of the other MFN treatment with respect to the allocation of and access to currency to pay for such imports.

Article II.—This article sets forth the agreement of both countries to maintain a "satisfactory balance of market access opportunities" through reciprocal reductions of tariff and non-tariff barriers. It also provides that trade is to be conducted between the two countries by means of contracts concluded as exercises of independent commercial judgment on the basis of non-discrimination and customary commercial considerations such as price, quality, availability, delivery, and terms of payment. In addition, Article II provides that neither country will require or encourage barter or countertrade. However, in the event that nationals or companies choose to resort to such practices, this article provides that both Governments will encourage them to furnish each other with all necessary information to facilitate the transaction.

Article III.—Article III includes general provisions concerning the desirability of expanding two-way trade and commits both countries to take "appropriate measures" to encourage the exchange of goods and services. Article III also states the mutual ex-

pectation of both countries that the agreement will result in increased orders for each other's goods and services. Moreover, under Article III, the countries agree to facilitate the holding of trade promotional events and encourage their companies and citizens to participate in such events. Article III further provides that, consistent with their laws, the United States and Romania will permit the duty-free importation and reexport of articles used in trade promotion events.

Article IV.—Under Article IV, the United States and Romania agree to permit, on a reciprocal basis, the establishment of government commercial offices. Article IV prohibits these offices and their respective officers from participating directly in the negotiation, execution, or fulfillment of trade transactions.

This provision permits government commercial offices to hire directly both host country and third country nationals, consistent with applicable immigration laws. This article also contains general provisions concerning unhindered access to government commercial offices, participation in the activities of these offices, and access to the personnel of these offices.

Article V.—This article contains a number of provisions aimed at facilitating business transactions between the United States and Romania. These provisions relate to the establishment of "commercial representations," the direct hire of employees, importation of office equipment, access to office space, living accommodations, employment of agents and distributors, the stocking and distribution of samples and replacement parts, advertising, market research, and access to services provided by governments (e.g. public utilities). Article V also prohibits each country from imposing measures which unreasonably impair the contractual or property rights of the other and obligates each country to ensure that governmental decisions affecting commercial operations are made expeditiously.

Article VI.—In Article VI, the United States and Romania agree to make publicly available on a timely basis all laws, regulations, judicial decisions, and administrative rulings relating to trade, investment, and other commercial matters. This article also stipulates that each country shall provide access to available non-confidential information on its internal market. In addition, Article VI requires each party to permit nationals and companies of the other country to comment on the formulation of rules and regulations which affect the conduct of business.

Article VII.—This article stipulates that trade between the United States and Romania is to be conducted in U.S. dollars or other convertible currencies, unless the parties to individual transactions agree otherwise. The article also binds the parties not to restrict the export of convertible currencies or deposits obtained in connection with trade in goods and services. Article VII also permits nationals and companies to deposit local currency in local financial institutions. Article VII also requires non-discriminatory treatment with respect to a range of financial transactions.

Article VIII.—In Article VIII, both countries agree to provide adequate and effective protection and enforcement of intellectual property rights. Details of the commitments are set forth in a separate side letter.

Article IX.—In Article IX, both countries agree to work toward agreements on investment matters such as the repatriation of profits and the transfer of capital. The two countries agree generally to foster economic cooperation in such fields as statistics, standards, and production data. The two countries also agree to consult on services trade.

Article X.—Article X provides safeguard arrangements calling for prompt consultations and permitting the imposition of import restrictions in cases of market disruption.

Article XI.—This article incorporates a number of provisions relating to the settlement of disputes. For example, Article XI grants national treatment to the nationals and companies of both countries with respect to access to courts and administrative bodies, encourages the adoption of arbitration, sets forth desired arbitration procedures, and provides that each country is to ensure that there is an effective means for the recognition and enforcement of arbitral awards.

Article XII.—Article XII stipulates that nothing in the agreement limits the right of either country to take actions to protect its national security interests.

Article XIII.—This article provides that the Joint American-Romanian Economic Commission shall periodically review the operation of the agreement. Article XIII also provides for prompt consultations through appropriate channels to discuss any matter relating to the agreement.

Article XIV.—This article provides definitions of the key terms used in the agreement.

Article XV.—Article XV contains several exceptions to the agreement. The agreement is not to be construed, for example, to prohibit action required or permitted by the GATT or measures to protect intellectual property rights. The article also provides that trade in products or services that are subject to existing bilateral or multilateral agreements on specific sectors, including textiles and civil aircraft, will be subject to those agreements, rather than this bilateral trade agreement.

Article XVI.—Article XVI deals with the entry-into-force of the agreement, stipulates that the initial term of the agreement will be three years, with possible extensions for three-year terms, and provides for termination of the agreement.

Side letters.—In separate side letters, each of which constitutes an integral part of the trade agreement, Romania made additional commitments concerning the protection of intellectual property, the promotion of tourism, and access to information on companies and individuals involved in foreign trade and other information that would be useful in developing business contacts.

E. U.S.-ROMANIAN TRADE AND IMPACT OF TRADE AGREEMENT

(1) U.S.-Romanian trade

U.S. exports to Romania in 1991 reached \$206 million, down sharply from the \$368 million in goods the U.S. exported in 1990. Leading 1991 exports were coal (\$54 million), soybeans (\$28 million), corn (\$20 million), and butter (\$11 million). U.S. imports from Romania in 1991 totaled \$70 million, or one-third the value of U.S.

imports from that country in 1990. Leading imports were iron and steel products, tractors, refined petroleum products, footwear, apparel, luggage and glassware. For the first six months of 1992, U.S. exports to Romania were down six percent over the comparable period in 1991, while U.S. imports were up 17 percent.

(2) Impact of the trade agreement

The General Accounting Office (GAO) has estimated that granting MFN status to Romania would reduce the weighted average tariff rate on dutiable products, excluding refined petroleum products, by about 25 percentage points, from about 34 percent to 8.8 percent. The GAO estimates that the tariff on refined petroleum products, historically the leading U.S. import from Romania, would drop about 3.5 percentage points. The GAO has also concluded, however, that even a substantial increase in U.S. imports from Romania would likely have only a small impact on total U.S. imports. At their peak, Romania's share of total U.S. imports was less than three-tenths of one percent, and Romania's total exports to all countries in 1989 amounted to less than three percent of total U.S. imports.

The Committee believes that approval of the trade agreement and the extension of MFN treatment to Romania will start the two countries down the road toward increased economic cooperation, which will benefit companies in the United States as well as Romania. The Committee believes, however, that democratic institutions should take firm hold in Romania and that, in particular, upcoming elections should be conducted freely and fairly and in a manner that upholds the integrity of the democratic process.

Accordingly, the Committee reports favorably the resolution approving the extension of MFN treatment, with the hope that the full Senate will be able to act promptly on the resolution. The Committee understands that Senate approval will be contingent upon assurances that the parliamentary and presidential elections have been conducted in a free and fair manner. Assuming those assurances are forthcoming, the Committee will support enactment of S.J. Res. 320 and the extension of MFN treatment to Romania.

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. 320 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, September 23, 1992.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S.J. Res. 320, a joint resolution approving the extension of most-favored-nation (MFN) status to Romania, as ordered reported by the Senate Committee on Finance on September 22, 1992. CBO estimates that extending MFN status to Romania for one year would result in an \$11 million reduction in federal government receipts in fiscal year 1993.

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. However, the President may waive the stipulation on an annual basis if he certifies that granting MFN status would promote freedom of emigration in that country. The President used such a waiver and granted Romania MFN status beginning in 1975 and continued to do so through 1987. In 1988, Romania renounced the renewal of its MFN status; consequently, the President did not exercise his authority to issue a waiver of Title IV, and Romania lost its MFN status.

Because a trade agreement between Romania and the United States is still valid, only two things would be necessary for Romania to receive MFN status: the President must issue the waiver of Title IV, and Congress must pass a joint resolution of approval of the waiver. On June 3, 1992, the President notified Congress of his intention to waive Title IV.

S.J. Res. 320 approves the extension of MFN status to Romania. Granting MFN status would lower tariff rates on imports from Romania. CBO estimates that lowering tariff rates would reduce customs duty revenues below the level projected under current tariff rates. While imports would rise in response to the lower domestic price resulting from the lower tariffs, the negative effect on revenues of the lower rates would outweigh the positive effect on revenues of the greater volume of imports from Romania. In addition, it is likely that some of the increase in U.S. imports from Romania resulting from its MFN status would displace imports from other countries. In the absence of specific data on the extent of this substitution effect, CBO assumes that an amount equal to one-half of the increase in U.S. imports from Romania will displace imports from other countries. CBO estimates that, net of income and payroll tax offsets, granting Romania MFN status would reduce federal government receipts by \$11 million in fiscal year 1993.

S.J. Res. 320 would affect revenues and thus would be subject to pay-as-you-go procedures under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

PAY-AS-YOU-GO CONSIDERATIONS

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Changes in outlays.....	(¹)	(¹)	(¹)	(¹)
Changes in receipts.....	0	-11	0	0

This estimate is based on 1991 Census data on imports from Romania. The increase in imports of goods from Romania resulting from the reduced prices of the imported products in the U.S.—reflecting the lower MFN tariff rates—has been calculated using estimates of the substitution between U.S. products and imports of the same goods.

The calculation assumes that the economy of Romania will function in the next year in a manner similar to that in the recent past. Obviously, major political and economic changes are underway in Romania that could affect its ability to produce and export goods, its need to import goods from the U.S. and other countries, and the exchange rate between its currency and that of the U.S. However, we believe that the assumption of relatively constant economic performance is appropriate for a one-year extension of MFN status. Over a five-year period, the economic outlook is much more uncertain.

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell.

Sincerely,

JAMES L. BLUM
(For 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. 320, 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 (1992) Annotated
for Statistical Reporting Purposes

GENERAL NOTES

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3(a). * * *

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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
Cuba
Kampuchea
Laos

North Korea
[Romania]
Union of Soviet Socialist Republics
Vietnam

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