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The Most-Favored-Nation Status of China: View from the U.S. Senate

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ent, they will see the difference between section 301 and the withdrawal of MFN status.

Mr. BAY: Senator Danforth ranks twenty-fifth in seniority in the Senate and serves on three key committees. As a senior member of the Senate Finance Committee, he has aimed at expanding exports, establishing the concept of reciprocity by seeking to eliminate foreign trade barriers to U.S. goods and services, and providing assistance to workers and industries injured by imports. Senator Danforth will discuss the MFN status of China from the Senate perspective and will speak broadly on the topic of using market leverage to achieve nonmarket objectives.

### THE MOST-FAVORED-NATION STATUS OF CHINA:

#### VIEW FROM THE U.S. SENATE

*By John C. Danforth\**

During the 102nd U.S. Congress, the Senate twice sustained presidential vetoes of legislation to condition most-favored-nation status for China on human rights, arms proliferation and trade conditions. On March 18, 1992, the Senate sustained the President's veto of H.R. 2212 by a vote of 60–38. On October 1, 1992, the Senate sustained the President's veto of H.R. 5318 by a vote of 59–40.

During last year's presidential campaign, then-candidate Clinton said he favored conditioning renewal of MFN status on similar requirements. In *Putting People First*, Bill Clinton and Al Gore took the following position with respect to China's MFN: "We believe that the Bush Administration erred by extending Most Favored Nation trade status to the People's Republic of China before it achieved documented progress on human rights. We should not reward China with improved trade status when it has continued to trade goods made by prison labor and has failed to make sufficient progress on human rights since the Tiananmen Square massacre."

Since the election, President Clinton has been less than clear about whether he would sign legislation to condition MFN to China on human rights and other concerns. Under the Jackson-Vanik amendment, the President must request an annual renewal of MFN status for China each June. This annual requirement gives him a "hook" by which to place conditions on MFN without legislation.

Until the President says otherwise, I think we should assume that he will live up to his campaign commitment to place new conditions on MFN status for China. This guarantees another lively debate this year about U.S. policy toward China.

We should be clear, however, about the subject of the debate. It will not be whether or not we approve of the actions of the People's Republic of China; no one in the Senate supports China's policies on human rights, arms proliferation or trade. The real question is whether or not China's MFN status should be used to press for reforms in China. More broadly, the issue is whether unilateral trade sanctions are useful as a foreign policy tool and, if so, to what extent they should be used.

I do not think that unilateral trade sanctions should be used to accomplish foreign policy goals, and I do not believe that MFN status is the proper tool to accomplish our policy objectives with China. We should remember that, despite its name, most-favored-nation status is not some special privilege we grant only to our closest friends. Many countries with whose governments we have had sharp conflicts—including Iraq, Iran and Libya—continue to have MFN status.

\* Member of the Senate, U.S. Congress (R–MO).

Since passage of the Reciprocal Trade Agreements Act of 1934, MFN has been the basis of the U.S. trading relationship with virtually every other country in the world. Until 1951, in fact, we granted MFN status without exception. That unconditional MFN policy was changed by the Trade Agreements Extension Act of 1951, which withdrew MFN status from the Soviet Union and all countries under the control of international communism. This action was prompted by the outbreak of the Korean War.

The Jackson-Vanik Amendment to the Trade Act of 1974 for the first time provided for *conditional* MFN status. Under Jackson-Vanik, a Communist country can gain MFN status if the President determines that the country permits free emigration of its citizens. This requirement, targeted at the Soviet Union, was designed to encourage the emigration of Soviet Jews.

Jackson-Vanik might be seen as a precedent for placing new conditions on MFN for China. But there are significant differences between Jackson-Vanik and last year's China MFN legislation. Jackson-Vanik was a "carrot," offering normal trade status to a group of countries denied this status since 1951. Since none of the Communist countries had had MFN status since 1951, it cost the United States nothing to place this condition on MFN. No established business relationships were affected. China, on the other hand, has had MFN since 1980. And, while we have problems in our trading relationship with China, U.S. businesses did export \$7.5 billion worth of goods to China last year.

Moreover, Jackson-Vanik was focused on a single, targeted condition. There was no long list of conditions as in the recent China MFN legislation. Under Jackson-Vanik, if a country met the condition, it got MFN. Under last year's China MFN bills, China could meet two out of three general conditions and still not get MFN renewal.

Jackson-Vanik also provided for an annual waiver of the free-emigration requirement of the law; the President could grant MFN status to a country *not* in compliance with the free-emigration condition if the President determined that the waiver of Jackson-Vanik would substantially promote the objectives of the law. In other words, the President was given flexibility in applying the Jackson-Vanik amendment. Last year's China MFN bills did not provide for waivers. Instead, the President was required to determine that China was meeting each and every condition imposed; otherwise, MFN was to be denied.

The Jackson-Vanik Amendment was a feature of a bygone era—the era of the Cold War and American economic dominance. But the Cold War is now over, and economic competition around the world is stronger than ever. We can no longer cut off our economic relations with large parts of the world without causing significant economic harm to ourselves.

Any legislative effort to condition renewal of MFN status for China threatens to hurt the United States as much, if not more, than China. This is because conditioning renewal of MFN to China is tantamount to outright denial of MFN. As then-Deputy Secretary of State Eagleburger said before the Senate Finance Committee in 1991:

Throwing down the gauntlet with a public ultimatum on MFN—indeed, one specific to China—would only make it easier, not harder, for conservative Chinese leaders to claim that national honor and sovereignty precluded any concessions. Our credibility would then require us six months or one year from now to terminate MFN if China failed to meet each and every condition imposed.

Secretary Eagleburger's analysis is as accurate today as it was two years ago.

Once MFN has been withdrawn from China, what will we have accomplished?

First, since MFN treatment is reciprocal, we should expect to lose MFN treatment for U.S. exports to China. In 1992, we exported almost \$7.5 billion in goods to China, including over \$1 billion in aircraft and aircraft parts. The U.S. commercial aircraft industry has already been injured by the unfair, subsidized competition from Airbus, the European aircraft consortium. Loss of MFN in China would be another significant blow to this critical industry.

Secondly, if the United States denies MFN status to China, how many other countries will follow? I am not aware of a single other country even debating this question. Instead, I think we can expect our competitors around the world to take advantage of our unilateral action to expand their exports to China. The European Airbus, which already has some 28 percent of the world market, will replace Boeing and McDonnell Douglas in China. American wheat exports will be replaced with wheat from the European Community, Canada and South America. The Japanese, instead of IBM, will sell computers to the Chinese.

And once we deny MFN status, the basis of our economic relationship with China, how do we propose to influence China? We will have cut off our best avenue of influence in China: the personal examples set, and relationships developed, by American businessmen and businesswomen throughout China.

If, then, conditioning or denying MFN to China is not the best way to influence China, how should we deal with that country? My position is that we must first separate the various policy issues at stake in the China MFN debate.

In the Senate, the China MFN debate has been about three important, yet very different, sets of issues: human rights, arms proliferation and trade. Yet the Senate proponents of conditioning MFN rely only on trade policy to accomplish these diverse objectives. President Bush and a minority of the Senate took the opposite view. We said that trade policy should be reserved for accomplishing trade objectives, and other policy goals should be pursued through separate means.

As I said several times on the floor of the Senate during the previous Congress, this was a reversal of the usual lineup between the Congress and the Executive Branch on the relationship between trade policy and other policies. Traditionally, the Congress has sought to elevate the role of international trade in dealing with other countries, while the Executive Branch has subordinated trade concerns to other foreign policy and national security concerns. One example of this was the debate over codevelopment of the FSX fighter with Japan. The President primarily was concerned with our security relationship with Japan. Congress was concerned that the codevelopment project would provide Japan with technology that could be used to compete against American companies in the economic sphere. But with MFN for China, the roles were reversed during the Bush Administration. It was the Democratic leadership in Congress that tried to use the annual Jackson-Vanik waiver as a hook to force other foreign policy positions on the President. Now that we have a new President who favors conditioning MFN for China, it will be interesting to see whether Congress reverts to its traditional position on the relationship between trade policy and other national policies.

I certainly hope that Congress will take a fresh look at the advisability of conditioning MFN to China this year. But I am concerned that will not happen. The reason I am concerned is that there seems to be an alliance developing between those who honestly feel that trade should be subordinated to other policies and others who are motivated by a more traditional economic motive: protectionism.

While much attention has been paid by the media to questions of human rights and arms proliferation relating to China, a common theme in the China debate in the Senate involves another issue—the size of the U.S. trade deficit with China. Both in the Finance Committee and on the floor of the Senate, the size of our

trade deficit with China was cited as reason enough to deny China the “special” trade benefits of MFN.

There is no doubt that the United States runs a dangerously high and growing trade deficit with China (around \$18 billion in 1992). But I do not accept the position that a trade deficit is by definition unfair, or that reducing the deficit is itself an answer to our economic problems. In 1992, the United States had a trade *surplus* of almost \$9 billion with the European Community. I hope that no EC member would take the position that the deficit on their side was unfair and justified denial of MFN to this country.

My view is that one cannot judge the relative fairness of a nation’s trade policy by looking merely at overall deficit and surplus numbers. That was the approach of the so-called Gephardt amendment to the 1988 Trade Act. Congress rejected that approach in favor of “Super 301”—an approach that required the U.S. Trade Representative to identify particular trade barriers that were restricting U.S. exports and then to seek through negotiations to remove those barriers.

Super 301 expired in 1990 and was never used with respect to China, but the Bush Administration did initiate and successfully complete two section 301 actions with respect to China. The first produced a trade agreement in which China made significant commitments to improve its protection of U.S. intellectual property rights in China. The second 301 case led to a broad agreement by China to remove a vast number of nontariff barriers such as quotas, licensing requirements, and other restrictions on U.S. exports of industrial and agricultural products. This second agreement was reached just last October, so its effect on our trade deficit with China is not yet certain.

I would be the first to say that merely negotiating trade agreements is not enough. Congress will insist that China live up fully to the commitments it made in those agreements. But those agreements will have been in vain if we deny China MFN status.

Yet, I suspect that, despite those trade agreements, we will hear demands for conditions on MFN for China again this year. It will be interesting to listen to those arguments. My guess is that they will sound very similar to other arguments we have been hearing lately with respect to the North American Free Trade Agreement (NAFTA). The big push with regard to the NAFTA right now is the negotiation of “side agreements” on labor and the environment. Organized labor and many environmental groups tell us the problem with Mexico is not with its labor and environmental laws; they are very similar to ours. The problem is enforcement of those laws. The answer, these groups tell us, is trade sanctions.

As with human rights and arms proliferation, labor rights and environmental protection are legitimate and worthy governmental policy goals. But should we be using international trade as the vehicle to accomplish those policy goals? If we do, are we not in danger of closing markets rather than opening them?

My concern, with respect to both the debate over MFN for China and the negotiation of side agreements to the NAFTA, is that what may start out as a legitimate desire to deal with a problem like the environment will become a tool for protectionism. Instead of openly calling for trade protection, various industries will suddenly become champions of human rights in China or environmental protection in Mexico. They will say they are simply pursuing important non-trade policies, but the results they will seek—higher tariffs and tighter quotas on imports—seem very trade-related.

We in Congress often have complained that when it comes to trade disputes, American economic interests lose out to Presidential concerns about foreign policy. We should take the same position when it comes to subordinating trade policy

to congressionally-favored concerns like human rights and the environment. Using international trade as a bargaining chip costs us jobs and economic growth at home. These other policy concerns are important, and they should be pursued with vigor, but not at the expense of our economic interests.

#### DISCUSSION

**ROBERT L. MCGEORGE:**\* What is your view of U.S. relations with Vietnam and Cuba?

**Senator DANFORTH:** As a general rule, I do not know of any case where the use of economic sanctions has yielded positive results. This may be an overstatement in the case of South Africa. However, they should be a last resort, before bombing or using our troops. They may open opportunities for other countries and, once they are in place, getting rid of them is very difficult because removal says something about U.S. policy. With regard to North Vietnam, many are thinking about it, especially given the cooperation on the POW issue. However, regarding Cuba, there is no change in thinking, even though there are no results from our policy. It would be interesting to figure out how the United States could make a statement of principle without destroying its own interests and those of the most vulnerable element of the population.

**DANIEL WADE:\*\*** Regarding the New York Times article today about arms proliferation and expansion into the South China Sea, what can the Senate do?

**Senator DANFORTH:** We should press vigorously, diplomatically. We would like to find an effective antidote. I am skeptical that trade policy and sanctions would have the desired result.

**Mr. BAY:** Congressman Matsui said that MFN conditionality was directed at the Bush Administration to press it to take the issue seriously, and he questioned whether that will change, now that there is a Democratic president. Would you comment?

**Senator DANFORTH:** Much of what Congress does is to "egg on" the Executive Branch to greater enforcement. That is standard operating procedure. But conditioning MFN is more than a message. It has a real effect—and then what? I hope the Clinton Administration realizes the difference between campaign criticism of a sitting president and actual action as president. I am concerned that a Democratic administration, after twelve years of Republicans, is very concerned to please certain constituent groups, especially organized labor and environmental advocates. The result may be some unbalanced decisions. I am concerned that they will follow through on the PRC and on the NAFTA side agreements.

**Ms. BELLO:** I agree with your view. Can you tell us who the best messenger to the administration would be to deliver your message that we are not in the same position as previously to use our market as leverage to achieve a broad range of objectives?

**Senator DANFORTH:** I am certainly not a good messenger. Perhaps Treasury Secretary Bentsen will be the voice of good sense. He was pro-NAFTA as a senator. The business community and this audience definitely should make their opinions known to the new administration. Op-ed pieces are also very effective.

**Professor ALFORD:** I agree with your point of view as well. But, what about our trading partners? Given that the PRC is working to block Taiwan from accession to

\* University of Nebraska College of Law.

\*\* Yale Law Library.