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China's Most-Favored-Nation (MFN) Status: Congressional Consideration, 1989-1998

Updated August 1, 1998

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Abstract

Congress' willingness to consider disapproving or placing further conditions on China's most-favored-nation (MFN) status appears to have declined dramatically since 1992, when Congress came closer to doing both than in any prior or subsequent year. Long-standing congressional divisions over China policy likewise appear to have deepened, crossing party and ideological lines. This report provides detailed analysis of congressional legislative action on China's MFN status for each year from 1989 through 1998. It includes analysis of the legislative trends throughout this period, the political climate between the United States and China, and the dynamics between successive Congresses and the Bush and Clinton Administrations. It includes discussion of the 1998 change in terminology from "most-favored-nation" status to "normal trade relations" (NTR). It concludes with the implications of these trends for future actions on MFN status for China. This report is intended as background, and will not be regularly updated.

China's Most-Favored-Nation (MFN) Status: Congressional Consideration, 1989-1998

Summary

Since 1989, the U.S. policy debate over China's most-favored-nation (MFN) status has undergone several transformations. The issue was essentially irrelevant in the 1980s, when annual extension of MFN to China was nearly automatic. In 1989, the year of the Tiananmen Square crackdown, no resolution was even introduced that would have disapproved or put further conditions on China's MFN eligibility. But by 1990, Congress and the Bush Administration were clashing repeatedly over the direction and conduct of post-Tiananmen China policy. Administration officials often blamed Congress for being "obstructionist" and "partisan" on China issues. Members of Congress often criticized the President for ignoring congressional initiatives and being too accommodating toward Beijing. Much of this debate was carried out through the annual process of renewing China's MFN status. In this debate, the House has frequently been the more active body.

The MFN debate reached a zenith in the 102nd Congress. The House passed joint resolutions disapproving MFN for China in both 1991 and 1992. (The Senate has never passed a joint resolution of disapproval.) The real focus of the debate, however, was not whether to deny MFN status for China altogether, but instead whether to place new human rights conditions on China's MFN eligibility. Congress passed legislation in 1991 and again in 1992 that would have placed further conditions on China's MFN status. In both years, President Bush vetoed the legislation, and while the House voted in both cases to override, the Senate did not have the votes to do so.

In 1993, newly elected President Clinton announced he would link China's MFN status to human rights progress beginning in 1994. Although ultimately the President reversed himself, the 1993 decision appears to have been a pivotal catalyst in the declining importance of MFN status as a tool with which to influence China policy. Neither the House nor the Senate has passed MFN-related legislation during the Clinton Administration. Instead, Members have turned to legislative alternatives, most of which have included more specific, more targeted sanctions on China's activities. Although extension of China's MFN status appears to be a largely settled issue for now, the annual renewal process, with its statutory deadlines for action, is likely to continue to trigger consideration of China-related issues that do not deal with MFN.

Note: On July 22, 1998, legislation was enacted which replaced the term "most-favored-nation" in certain U.S. statutes with the term "normal trade relations." (P.L. 105-206). Nevertheless, since nearly all of the background information and congressional actions discussed in this report deal with material that pre-dates this change, this report will continue to refer to this trade status as "most-favored-nation" or MFN status throughout.

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China's Most-Favored-Nation (MFN) Status: Congressional Consideration, 1989-1998

Since the Tiananmen Square crackdown of 1989, the annual process of renewing China's most-favored-nation (MFN) status has been sharply controversial in U.S. policy circles. This report briefly reviews the U.S. policy debate on China's MFN status over the past ten years, and discusses the actions and attention given to the issue by the 101st to the 105th Congresses.

China's Eligibility for MFN Status

China's eligibility for MFN status is subject to freedom-of-emigration conditions imposed by the Jackson-Vanik amendment (Sec. 402) to the Trade Act of 1974. This permits U.S. authorities to grant MFN status to a "nonmarket economy" country providing that that country does not restrict emigration.¹ Under U.S. law, the President may either determine that China is in full compliance with the Jackson-Vanik amendment, or else he may waive the requirement of full compliance. U.S. Presidents have done the latter for the People's Republic of China (PRC) every year since 1980, when MFN status was first granted. The President's authority to waive restrictions expires every year on July 3, and he must recommend to Congress an extension of this waiver authority not less than thirty days prior to its expiration date, or no later than June 3. Congress has sixty days from the July 3 expiration date to disapprove the President's recommendation by a joint resolution under special "fast-track" procedures, or the waiver authority is renewed automatically for another year. Congress need not cite specific reasons for its disapproval. In addition to the joint resolution process, Congress may also amend current law at any time to impose new conditions or restrictions on China's MFN eligibility or to modify or eliminate restrictions altogether. Such actions would be independent of a joint resolution involving the extension of the President's waiver authority, and would not be subject to any of the Jackson-Vanik amendment deadlines. The 1998 change of terminology from MFN to "normal trade relations" does not affect either how this trade status is determined or the annual waiver recommendation process.

¹The statutory authority for continuing to deny China permanent, unconditioned MFN status is The Trade Agreements Extension Act of 1951 (P.L. 82-50), which required the President to suspend MFN status of the Soviet Union and all countries of the then Sino-Soviet bloc. The Jackson-Vanik amendment on emigration targeted the Soviet Union, which at the time greatly restricted or even prohibited its citizens from emigrating. Although the Jackson-Vanik amendment waiver renewal process has figured in China's MFN status, the annual debate has rarely focused on China's emigration policies. Instead, other issues involving human rights, trade, and national security have come to be cited as valid reasons for action by Congress to disapprove the Jackson-Vanik amendment waiver extension for China.

Key Findings

- ! Congress's willingness to consider withdrawing or putting further conditions on China's MFN status appears to have declined dramatically since 1992, when both House and Senate passed "conditionality" legislation which was ultimately vetoed by President Bush. Beginning in 1993, no legislation to disapprove or to place further conditions on China's MFN status has passed either house.
- ! Long-standing congressional divisions over China policy appear to have deepened in recent years, crossing party and ideological lines. MFN opponents include some conservative Republicans, right-wing religious organizations, human rights organizations, liberal Democrats, and labor interests. Proponents include party centrists, pro-business Republicans, conservative Democrats, and free-traders. In addition to disagreements over substance, there appear to be disagreements over strategy and tactics, with some senior congressional leaders committed to revoking MFN status, and others playing key roles in steering floor actions away from the MFN issue and toward other alternatives.
- ! The Clinton Administration, after initially linking China's MFN eligibility with human rights progress in 1993, abandoned that policy in 1994. Since then, the Clinton Administration has fielded a policy of "constructive engagement," and appears to have become more firmly committed to that approach in recent years. Since 1993, the issue of extending China's MFN status has never regained the prominence it had in the later years of the Bush Administration. Attention instead has shifted to other legislative vehicles designed either to affect developments in China or to influence U.S. policy.
- ! The question of extending China's MFN status became controversial the year following the Tiananmen Square crackdown of 1989; no legislation to disapprove or place further conditions on China's MFN status was even introduced in 1989. Beginning in 1990, the determination of President Bush to maintain presidential control over China policy, and Congress' objection to the nature of those policy decisions, combined to make the annual MFN renewal process the main focus of the U.S. debate over China. Congress came closer in 1992 to withdrawing or placing further conditions on China's MFN status than in any prior or subsequent year.

Congressional Consideration of MFN, 1989-1997					
Year	Disapproval Resolution	Final Status	Alternative MFN bills	Final Status	
1989	None	—	None	—	
1990	H.J.Res. 647	Passed House 10/18 (247-174)	H.R. 4939	Passed House 10/28 (384-30)	
1991	H.J.Res. 263	Passed House 7/10 (223-204) Postponed by Senate	H.R. 2212	Passed House 7/10 (313-112)	Conference Report H. Rept. 102-392 passed House 11/27 (409-21)
	S.J.Res. 153	Postponed by Senate	S. 1367	Passed H.R. 2212 in lieu 7/18 (55-44)	
1992	H.J.Res. 502	Passed House 7/21 (258-135)	H.R. 2212	Conference Report H. Rept. 102-392 passed Senate 2/25 (59-39) Vetoed by President 3/2 House override vote 3/11 (357-61) Senate override vote 3/18 (60-38) - veto sustained	
			H.R. 5318	Passed House 7/21 (339-62) Amended by Senate with text of S. 2808, passed by voice vote, 9/14 House passed Senate version 9/22, voice vote	H.R. 5318 vetoed by President, 9/28 House override vote 9/30 (345-74) Senate override vote 10/1 (59-40) - veto sustained
			S. 2808		
1993	H.J.Res. 208	House rejected 6/8 (105-318)	H.R. 1835 S. 806	No action	
1994	H.J.Res. 373	House rejected 8/9 (75-356)	H.R. 4590	Amended to impose no conditions, then passed House 6/8 (280-152)	
1995	H.J.Res. 96	House tabled 7/20 (321-107)	H.R. 2058*	Passed House 7/20 (416-10)	
1996	H.J.Res. 182	House rejected 6/27 (141-286)	H.Res. 461*	Passed House 6/27 (411-7)	
1997	H.J.Res. 79	House rejected 6/24 (173-259)	—	—	
1998	H.J.Res. 121	House rejected 7/22 (166-264)	—	—	

* H.R. 2058 and H.Res. 461, although not technically concerning MFN, were made in order by the same rule as that governing the joint resolution of disapproval — H.Res. 193 and H.Res. 463, respectively. Beginning in 1997, China-related legislation was considered independently of the disapproval resolution.

The Bush Administration

The collapse of the Soviet Union — and with it, China’s strategic importance as a counterweight to Soviet power — may well have resulted in an eventual reassessment of U.S. China policy in the 1990s regardless of other developments. But it was China’s June 4, 1989 Tiananmen Square crackdown that brought about an abrupt end to a decade of fairly smooth U.S.-China relations and modified optimistic U.S. projections for China’s future. Tiananmen suggested that the nascent political liberalization that had accompanied China’s program of economic reform had abruptly ended; along with it went the congressional support for Administration initiatives on China that had characterized the U.S. policy process through the 1980s.

Between 1989 and 1992, the U.S. policy process on China was characterized more by confrontation than consensus. Congress and the Bush Administration clashed repeatedly over the direction and conduct of China policy. Administration officials often blamed Congress for being “obstructionist” and “partisan” on China issues. Members of Congress often criticized the President for ignoring congressional initiatives and being too accommodating toward Beijing. In effect, there was a stalemate in U.S.-China relations, with Beijing generally unwilling to make policy concessions to the United States, President Bush unable to resume pre-Tiananmen “normal” relations with China, and Congress increasingly frustrated by its lack of significant success in pressuring either China or the Bush Administration to change its policy approach. For the most part, much of the U.S. debate over China during this period was carried out through the annual process of renewing China’s MFN status.

101st Congress — 1989-1990

The tenure of the 101st Congress saw the development of sharp divisions over China policy, both between the Congress and the White House, and among Members of Congress — divisions which were to characterize the U.S.

policy process on China for much of the next half-dozen years, and the effects of which are still felt today.

1989 — Major MFN Legislation

None

1990 — Major MFN Legislation

H.J.Res. 647, Disapproving MFN

H.R. 4939, Further Conditions on China’s MFN Status

1989 — Routine Renewal Despite Tiananmen Square. The annual renewal of China’s MFN status had been relatively non-controversial since MFN — or what is now referred to as “normal trade relations” — status was first granted to China in

1980.¹ The MFN renewal process in 1989 was no exception to this tradition. In spite of the Tiananmen Square crackdown of June 4, 1989, which came just 3 days after President Bush's MFN extension recommendation for that year, the 101st Congress did not debate China's MFN status. No joint resolution was even introduced in the Congress in 1989 to disapprove the President's recommendation for an extension of his MFN waiver authority for China. Instead, the U.S. response to Tiananmen Square that year consisted of two sets of non-MFN-related sanctions announced by President Bush (on June 5 and June 20, 1989)², and a series of bills that Congress considered which were designed to codify the President's actions and expand their scope.³

Throughout 1989, President Bush generally opposed these congressional efforts to broaden the Tiananmen sanctions he had announced. The subsequent policy differences over China that developed between the President and the Congress through the rest of that year were fueled in part by the President's objections to congressional involvement and by his efforts to maintain "constructive engagement" with the Chinese leadership. But interbranch tensions were also exacerbated by two specific circumstances. The first was the visits to China in early July and on

¹Prior to 1983, Congress had disapproved Congress had relied on so-called "legislative veto" to disapprove the annual extension of MFN to China and other presidential actions. Under this procedure, one house or even one committee chair could effectively block a presidential plan. But in 1983, in the case of *INS v. Chadha*, (462 U.S. 919), the Supreme Court ruled the legislative veto unconstitutional, effectively invalidating it as a congressional tool. The obstacle posed by the Chadha decision could be part of the reason for the relative lack of congressional activity on the question of China's MFN during the 1983 — 1990 time period. In 1990, Congress adopted a provision in Sec. 132 of H.R. 1594, the Customs and Trade Act of 1990, that resolved the Chadha problem by amending the Trade Act of 1974 to provide for a joint resolution of disapproval for presidential recommendations on MFN status. The bill became Public Law 101-382 on August 20, 1990.

²On June 5, 1989, President Bush ordered the following actions: suspension of all government-to-government military sales and commercial exports of weapons; suspension of visits between U.S. and Chinese military leaders; sympathetic review of requests by Chinese students studying in the United States to extend their stays; the offer of humanitarian and medical assistance through the Red Cross to Tiananmen victims; and review of other aspects of U.S.-China relations. On June 20, 1989, the President suspended all high-level U.S. Government exchanges with Chinese officials, and directed American representatives at international financial institutions to seek to postpone consideration of new loans for China.

³Most of the 101st Congress' Tiananmen-related sanctions on China were included in H.R. 1427, the State Department Authorization bill for FY1990-1991 (P.L. 101-246). Many of these still apply in 1998, and they constitute what Beijing occasionally refers to as the "Tiananmen Sanctions." The law provides authority for presidential waivers, and presidents have waived one or more of the sanctions on a case-by-case basis. None of the sanctions relate to China's MFN status. Under the provisions of P.L. 101-246, the United States continues to maintain prohibitions on: sales of military equipment and weapons to China; export of U.S. satellites; Overseas Private Investment Corporation (OPIC) and Trade Development Agency (TDA) programs; export licenses for crime control and detection equipment; and liberalization of export controls on technology. Although the law also banned nuclear trade and cooperation, President Clinton announced after the October 1997 U.S.-China summit that such cooperation could begin in 1998.

December 9, 1989, by National Security Advisor Brent Scowcroft and Deputy Secretary of State Lawrence Eagleburger, in violation of the President's own announced ban on high-level visits to China. The fact that Scowcroft and Eagleburger went to China in July 1989 was kept secret from Congress and the public until December 18, 1989. The second visit, on December 9, 1989, was announced as both men were enroute to China.

The visits sparked congressional anger. Many Members questioned the President's judgment, terming the visits as unwise or as "the wrong message at the wrong time."⁴ In addition, Congress became increasingly frustrated with the President's veto or waiver of many of its legislative initiatives to toughen the U.S. stance toward Beijing. In late 1989 and early 1990, for example, the President vetoed or waived four key congressional initiatives on China.⁵ Members were particularly upset when the President vetoed the Emergency Chinese Immigration Relief Act of 1989 (H.R. 2712, Rep. Pelosi), only to take similar measures shortly afterward by Executive Order 12711. To many in Congress the message was clear; in his efforts to retain control over policy decisions, the President appeared willing to prevent congressional initiatives to which he had no substantive objections.⁶

1990 — Beginning Use of MFN as a Policy Tool. By 1990, many in Congress had become increasingly frustrated with the direction of U.S. China policy and with President Bush's dominance of policy decisions. With its first-session initiatives having been vetoed or overturned by the White House, Congress in 1990 turned to the President's annual MFN renewal recommendation for China — uncontroversial in the past — as a vehicle for registering congressional disapproval of China's repressive policies and as a way of putting pressure on the Bush Administration to adopt a tougher approach toward Beijing. Thus, while resolutions concerning MFN status had been introduced the previous year, six resolutions of disapproval were introduced in 1990, with an additional three joint resolutions relating in some other way to eliminating China's MFN status.⁷ But there was little Senate sentiment in

⁴Senator Mitch McConnell, quoted in *The Congressional Quarterly*, December 16, 1989, p. 3435.

⁵In addition to vetoing the Emergency Chinese Immigration Relief Act of 1989, President Bush vetoed the first version of the Foreign Relations Authorization Act (although not for China-related reasons); waived sanctions against satellite exports to China contained in H.R. 2991, the State/Justice/Commerce Appropriations bill (P.L. 101-162); waived sanctions on EximBank loans contained in H.R. 2494, the International Development and Finance Act of 1989 (P.L. 101-240); and waived the suspension of military-related sales for the sale of Boeing jets to China (July 7, 1989).

⁶Speaking on December 11, 1989, about the Pelosi bill, President Bush said "I want to keep control of managing the foreign policy of this country as much as I can. And I didn't think that legislation was necessary." Cited in *The Congressional Quarterly*, December 16, 1989, p. 3435.

⁷In 1990, Congress amended the Trade Act of 1974 with new procedures for disapproving presidential actions, replacing those deemed unconstitutional in 1983 by the Supreme Court in *INS v. Chadha*. Thus, 1990 was the first year that joint resolutions of disapproval were sanctioned as the method for Congress to disapprove presidential recommendations on
(continued...)

1990 for an outright disapproval of MFN status, particularly in view of the Persian Gulf War, which was occupying most of the U.S. attention that year. In addition, the willingness of Chinese leaders not to stand in the way of U.N. votes on Iraq helped mute overt U.S. criticism of China's domestic policies for much of the year. Ultimately, only the House passed a joint resolution of disapproval in 1990, H.J.Res. 647, approved on October 18, 1990, by a vote of 247-174.⁸

Instead, most of the debate during the year involved separate legislation that would have placed new conditions on China's future eligibility for MFN status, beyond those already imposed by the Jackson-Vanik amendment. Such legislation became known informally as "conditionality" legislation. In 1990, the House concentrated on proposing broad, sweeping, but fairly general human rights and international security language that should be applied to China before it could qualify for MFN status. Rep. Donald Pease introduced the bill that became the main legislative vehicle for conditionality (**H.R. 4939**).⁹ As introduced, the bill would have added, to the existing Jackson-Vanik amendment emigration conditions, new conditions involving "substantial" progress on gross human rights violations; ending martial law throughout China, including Tibet; and ending assistance to the Khmer Rouge in Cambodia. As amended and reported out by the House Ways and Means Committee, the bill deleted the language on assistance to the Khmer Rouge and limited itself more directly to general human rights conditions, directing that the President must take them into account in order to extend MFN status to China beginning in 1991. As amended and passed by the House, H.R. 4939 included requirements that China release political prisoners, improve political freedoms, and end religious persecution.

Also included in H.R. 4939 was sense-of-Congress language that the President should link China's observer status in the General Agreement on Tariffs and Trade (GATT) to China's MFN status eligibility.¹⁰ All of the conditions put forward would have applied to China's MFN status beginning the following year, in 1991. The House debated the bill thoroughly in 1990, passing it by a wide margin (384-30). But President Bush's repeated assertions that he would veto any legislation denying or placing further conditions on China's MFN status made congressional action on conditionality appear more symbolic than substantive. This was particularly true since the Senate was regarded as insufficiently opposed to MFN to achieve a two-thirds vote to override a certain presidential veto. In any event, Congress adjourned

⁷(...continued)

China's MFN status.

⁸H.J.Res. 647 (H. Rept. 101-772). The resolution was considered under rule H.Res. 485 (H. Rept. 101-791).

⁹H.R. 4939 was introduced on May 24, 1990, and the full Ways and Means Committee filed its report on July 23, 1990 (H. Rept. 101-620). The full House considered the bill on October 18, 1990, under rule H.Res. 503 (H. Rept. 101-851). The Senate took no action.

¹⁰The GATT was replaced by the World Trade Organization (WTO) on January 1, 1995. Legislation to link China's MFN status with its potential WTO membership is still being debated in 1998.

on October 28, 1990, before the Senate took action on the bill. Thus, the 101st Congress did not enact any MFN status restrictions for China.

102nd Congress — 1991-1992 — Growing Contention

With the end of the Persian Gulf War in the spring of 1991, the U.S. debate over China's MFN status grew especially heated. President Bush strongly supported renewing China's MFN status without enacting additional conditions. The President announced his decision to recommend an extension at a commencement speech at Yale University, saying, "We cannot transform a world if we hide from its unpleasant realities. We can advance our cherished ideals only by extending our hand,

showing our best side, sticking patiently to our values, even if we risk rejection."¹¹ Administration officials defended the flexibility and selectiveness of the President's actions on China. Congressional actions on MFN status were a "blunt instrument" that would only hurt U.S. interests, according to Administration officials. Secretary of State James Baker made one of the Administration's key arguments for unconditional extension of MFN status :

To deny MFN to China will destroy our dialogue with the Chinese on these issues and dismantle our leverage. Conditioned renewal would be tantamount to withdrawal, holding our interests hostage to unpredictable actions by the Chinese government.¹²

In arguing against MFN status, Senator Jesse Helms, speaking on the Senate floor, said "This is one of those difficult times when I have to disagree with a friend...I believe him [Bush] to be sincerely wrong." Making a similar argument against MFN status, Senator Joe Biden said "...if China continues to behave as a rogue elephant on weapons proliferation, we should be prepared to retaliate with a clear and unequivocal message...denying China most-favored-nation trade status."¹³

1991 — Major MFN Legislation

H.J.Res. 263, Disapproving MFN

S.J.Res. 153, Disapproving MFN

H.R. 2212, Further Conditions on China's MFN Status

S. 1367, Further Conditions on China's MFN Status

1992 — Major MFN Legislation

H.J.Res. 502, Disapproving MFN

H.R. 2212, Conditioning MFN (veto override)

H.R. 5318, Further Conditions on China's MFN Status

(bill plus veto override)

S. 2808, Further Conditions on China's MFN Status

¹¹Bush commencement address, Yale University, May 27, 1991, Public Papers of the Presidents of the United States. George Bush, 1991, Book I, January to June 30, 1991. GPO, Washington, D.C. 1992. Pp. 565-568. Bush submitted his formal recommendation on May 29, 1991. (Presidential Determination No. 91-36; FR Doc. 91-13929).

¹²Letter dated June 14, 1991, from Secretary of State James Baker to Speaker of the House Tom Foley. Secretary Baker went on to say, "To employ such a blunt instrument will succeed only in hurting the millions of people in China who seek economic and political reform and who look to the U.S. for compassion and support."

¹³*Congressional Record*, July 23, 1991, p. S10640.

Again, Congress generally disagreed with President Bush's approach. This time, congressional sentiment for revoking or conditioning MFN status seemed stronger, particularly in the House. Members expressed concerns over reports of Chinese prison labor exports, textile quota evasions, and weapons and nuclear technology sales to the Middle East and Pakistan. To some observers, the debate at times carried partisan overtones, with a Democrat-majority Congress facing off against a Republican President. But in other respects, both congressional criticism of and support for the President's approach crossed party and ideological boundaries. A bloc of Democrat free-traders on the key House Ways and Means Committee were philosophically opposed to the concept of using trade restrictions to further foreign policy goals, and found themselves supporting a position close to the President's.¹⁴ Members interested in protecting American workers focused on the growing U.S. trade deficit with China.¹⁵ Liberals and conservatives alike found fault with continuing to provide MFN status to China under existing conditions, given allegations about China's weapons sales policies, and argued that the policy of engagement had failed and it was time for a tougher approach.¹⁶

In unexpected alliance, both liberal Democrats and conservative Republicans introduced joint resolutions to disapprove the President's recommendation to extend MFN status to China.¹⁷ Other Members, while supporting the President's position, nevertheless advocated compromise, believing that congressional sentiment was running against the White House. In addition to the greater rancor of the MFN status debate, relevant legislation came closer to being enacted than in the previous Congress. Whereas only the House had passed conditionality legislation in the 101st Congress — and then, only during the second session — the House and Senate each passed such legislation in the 102nd Congress, and in both sessions. In each case, President Bush vetoed the legislation, with only the House later voting to override.

1991 — The Rise of “Conditionality”. The MFN debate in 1991 ultimately focused on the prospect of attaching new conditions to China's future eligibility for MFN status, rather than the prospects for denying MFN status altogether. In addition, issues being proposed in MFN conditionality legislation were sometimes introduced as separate, free-standing bills, or as amendments to other bills. The China MFN status issue found its way into the FY1992 Foreign Operations Appropriations bill, linked to international family planning funding in an amendment introduced by the Subcommittee Chairman, Representative David Obey. Calling his amendment the “Hypocrisy Reduction Act of 1991,” Representative Obey sought to underscore his argument that the Bush Administration was inconsistent on China,

¹⁴In 1991, these Ways and Means Committee Members included Representatives Dan Rostenkowski, the Committee Chairman, and Sam Gibbons, Chairman of the Committee's Trade Subcommittee.

¹⁵On the House floor, Representative Doug Applegate said it was “...time to stop exporting American jobs...” *Congressional Record*, July 21, 1992, p. H6270.

¹⁶ *Congressional Record*, April 17, 1991, p. S4518.

¹⁷Senator Alan Cranston (S.J.Res. 153); Representatives Barney Frank (H.J.Res. 262) and Gerald Solomon (H.J.Res. 263).

favoring MFN status for China while at the same time seeking to deny it U.S. family planning funds.¹⁸

House Actions. In 1991 legislation, Congress expanded beyond the more general human rights language considered in the 101st Congress and began not only to address more specific allegations of China's human rights violations, such as prison labor exports, but to broaden the bill's legislative focus to other issues, such as missile proliferation and unfair trade practices. On May 2, 1991 — well in advance of the President's May 29 MFN status renewal recommendation — Representative Nancy Pelosi introduced legislation in the House (**H.R. 2212**) that ultimately attracted 150 cosponsors and became the vehicle for legislative action on MFN conditionality. By June 1991, the Pelosi bill had been modified sufficiently to secure the support of other key Members — notably, Representatives Solarz and Pease — who also opposed the Administration's recommendation for extension of MFN status without new conditions, but who had been uncomfortable with the requirements of H.R. 2212 that China make specific improvements before it could receive MFN status again.¹⁹

The modified Pelosi bill applied new conditions to China's eligibility for MFN status the following year, in 1992. These included the requirement of “unequivocal” Chinese assurances on nuclear non-proliferation and missile sales, as well as conditions relating to allegations of coercive abortions and forced sterilizations in China. The bill also required China to make “significant overall progress” on a series of human rights goals by 1992, including those involving Tibet, Hong Kong's reversion to China, torture and inhumane prison conditions, and press freedom, among others. The bill also urged the President to take firm action on China's trade violations and unfair trading practices. Finally, the bill declared that before China could qualify for MFN status in 1992, Beijing would have to provide an accounting for people who were arrested for nonviolent expression of their political beliefs during the Tiananmen Square crackdown, and release those who had been imprisoned.

The House Ways and Means Committee took up the bill on June 26, 1991, and adopted a series of amendments that significantly toughened the bill, including: language demanding that China drop its opposition to Taiwan's becoming a GATT signatory; requirements that China end any population-control program involving coercive measures; and assurances that it was not selling ballistic missiles in the Middle East. The Committee rejected an amendment by Representative Bill Archer that would have softened the bill and given broad discretion to the White House to make the decision about China's MFN status in 1992. The Committee reported H.R. 2212 to the full House on June 26, 1991 (H. Rept. 102-141)

House consideration of H.R. 2212, on July 10, 1991, was conducted under a more complex rule than in the previous Congress. The rule, H.Res. 189 (H. Rept.

¹⁸The Obey quotation is cited in the *Congressional Quarterly*, June 13, 1991, p. 1599.

¹⁹During floor debate, Representative Pease spoke in favor of the Pelosi bill, which he said he had “amended along with other members of the House Ways and Means Committee...” including Representative Solarz.

102-145), provided for consideration of 3 measures: **H.J.Res. 263** (the joint resolution of disapproval — H. Rept. 102-140); H.R. 2212 (the conditionality bill); and a related sense-of-Congress resolution (H.Con.Res. 174).²⁰ The rule also provided for the Ways and Means Committee amendments to be considered en bloc without a separate vote. After first passing the joint resolution to deny MFN status by a vote of 223 - 204, the House immediately took up H.R. 2212, passing it with broad bipartisan support and a veto-proof margin (313-112). As passed, the final bill included the more restrictive Ways and Means Committee amendments.²¹ The Archer resolution to recommit with instructions was defeated, 118-308.²²

Senate Actions. President Bush was thought to stand a better chance in the Senate of avoiding enactment of stringent conditions on China's MFN status eligibility. Nevertheless, the Senate bill that Senator George Mitchell first proposed in May, **S. 1367**, was stricter than the original Pelosi bill. It withdrew MFN status altogether within 6 months if China did not take far-reaching political steps, including release of all political prisoners. Meanwhile, seeking to avoid a confrontation and find common ground on which the President and Congress could agree, a bipartisan Senate group initiated a dialogue with the White House. In a letter to the President, the group offered praise for the "meaningful steps" he had recently taken on intellectual property rights and technology transfers, but urged him "to take appropriate actions in other areas," saying "it is essential that the Administration take concrete steps."²³ The President responded positively to the Senate group, but in words that specifically linked current and future Administration initiatives with continuing Senate support of the President's position in extending MFN to China without further conditions.

In sum, therefore, I am prepared to address the concerns you and your colleagues have identified, and I am doing so. But discontinuing MFN, or attaching conditions to its renewal, would cause serious harm to American interests and would render futile pursuit of the initiatives I have outlined, which are discussed in greater detail in the attachments. Working together,

²⁰H.Con.Res. 174 (Solarz), a non-binding resolution on U.S.-China relations, was reported by the House Foreign Affairs Committee (H.Rept. 102-142, part II) and the Ways and Means Committee (H. Rept. 102-142, part I) on July 9, 1991. The resolution was tabled during floor debate on July 10, 1991.

²¹For the House debate on H.R. 2212 and H.J.Res. 263, see the *Congressional Record* of July 10, 1991, pp. 17815- 17871.

²²Speaking about his motion on the floor, Rep. Archer said, "My substitute allows the President and the Congress to work together toward a unified U.S. policy." *Congressional Record*, July 10, 1991, p. 17869.

²³During the Senate veto override debate, the texts of a series of letters exchanged between the Baucus Senate group and President Bush were inserted in the *Congressional Record* of March 18, 1992, beginning on p. S3823.

I believe we will best protect America's interests by remaining engaged with China...²⁴

Judging that his proposal's six-month cut-off appeared too restrictive to attract a Senate majority, Senator Mitchell introduced a bill on June 25 that was a modified version of his original proposal. Like the House bill, Sen. Mitchell's bill (S. 1367) imposed conditions on China's MFN status eligibility in 1992, the following year. Although similar to the Pelosi bill in most other respects, the Mitchell bill in addition included mandates that China stop providing arms to the Khmer Rouge in Cambodia, and required "significant progress" on several bilateral trade issues. The Mitchell bill contained no language on Taiwan's GATT membership, unlike the Pelosi bill.

The Senate Finance Committee reported out the modified S. 1367 on June 27, 1991, by an 11-9 party-line vote, without amendment and without recommendation (S. Rept. 102-101). On July 18, 1991, in keeping with its traditional reluctance to withdraw MFN status, the full Senate postponed indefinitely the two joint resolutions of disapproval, S. J Res. 153 and H.J.Res. 263. This left S. 1367, the conditionality bill, as the only Senate option on MFN status. The Senate took up that bill on July 23, 1991, adopting a number of floor amendments by voice vote.²⁵ Finally, the Senate substituted the language of S. 1367 for that of H.R. 2212, then passed the latter in lieu. Final passage of H.R. 2212 in the Senate was by a vote of 55-44 — an insufficient margin to override a certain presidential veto.

Conference. Given the Senate vote margin, congressional momentum for a conference on H.R. 2212 slowed. Conferees were not chosen until October 1991. Conferees included Members from both Houses who had objected to H.R. 2212's stricter provisions, and they worked to soften the bill considerably in conference. The resulting conference report was significantly milder than either the Senate or House version, and the House passed it on November 27 by an even wider margin than it had given to the Pelosi bill — 409-21. Congress adjourned for the year before the Senate acted on the conference report.

Presidential action. As 1991 unfolded, Bush Administration officials concluded that growing congressional frustration would require adjustments in U.S. policy to avoid congressionally mandated restrictions on China's MFN status. In addition, the White House faced continued lack of cooperation from China. Chinese leaders consistently failed to make the kinds of gestures, such as releasing some Tiananmen demonstrators, that could have strengthened the President's hand. Trying to deflect congressional opposition and assure enough Senate votes to sustain a veto,

²⁴From President Bush letter to Senator Baucus, July 19, 1991, reprinted in the *Congressional Record*, March 18, 1992, p. 3823.

²⁵Floor amendments adopted included the following requirements: that the President certify China has made significant progress in reducing aid to Cuba (Graham); that the President certify China does not engage in coercive family planning programs (Mikulski); that the President endeavor to ensure that other GATT members also deny China MFN status (Kerrey); language on prison labor (Helms); a requirement that China lose MFN status if it transferred M-9 or M-11 missiles to Syria or Iran (Biden); and an amendment directing the President to work multinationally to influence China's behavior.

Administration officials quietly changed to a position less accommodating of Beijing. While continuing to promise to veto MFN conditionality legislation, President Bush authorized a number of tough initiatives on other, specific issues of concern to Members, primarily involving missile proliferation and trade.

Among other things, President Bush authorized the U.S. Trade Representative to launch investigations of China under Section 301 of the Trade Act of 1974 for unfair trade practices and for violating U.S. intellectual property rights (IPR). The Administration also authorized seizure of Chinese textile products that were suspected of having been transshipped to the United States illegally in violation of China's quotas, and Administration officials stated, for the first time, that the United States would begin to work actively in support of Taiwan's accession to the GATT. The U.S. Customs Service also began investigating the extent to which China was using prison labor to produce export products. In a lengthy letter to Congress that same year, President Bush linked the new initiatives directly with congressional concerns, saying that he was "prepared to address the concerns you and your colleagues have identified."²⁶ The somewhat tougher Administration approach appeared to be too little and too late to blunt continued congressional initiatives, but it underscored how Congress could influence White House foreign policy decisions even absent the passage of veto-proof legislation.

1992 — Challenging the President. Congressional actions on and influence over U.S. decisions on China policy were more pronounced in 1992 than in any previous year, for a number of reasons. First, the President's earlier dominance over U.S. China policy had alienated many in Congress by appearing to prevent the legislative branch from serving as a respected partner in the policy process. His decision to remain engaged with leaders in Beijing had sparked widespread criticism that his policies were out of step with changing circumstances in China and in the Communist world. And the credibility of his policy was eroded by the failure to obtain important concessions from Beijing. Finally, as the U.S. presidential election campaign progressed throughout the year, President Bush appeared increasingly vulnerable in his reelection bid; while the Administration's overall foreign policy ratings were high, those ratings did not appear critical to the election, and in any case did not extend to U.S. policy decisions on China. These factors combined to help weaken the Administration's ability to conduct a coordinated policy on China in 1992, and thus permitted a growing array of diverse congressional initiatives to become more dominant and influential in shaping the 1992 debate.

Congress acted on three separate MFN-related bills in 1992: H.R. 2212/S. 1367 (unfinished at the end of the first session in 1991); H.J.Res. 502; and H.R. 5318/S.2808. Of the three measures, only H.J.Res. 502 (which was passed by the House but died in the Senate Finance Committee) would have disapproved the President's recommendation to extend MFN status to China for 1992. The other two measures would have added conditions on China's MFN status eligibility, but only for future years. These two measures did pass both Houses — as before, by wide margins in the House, but not by veto-proof margins in the Senate.

²⁶Letter from President Bush to Senator Baucus, dated July 19, 1991, with attachments.

Conditioning China's MFN Status: Effort #1. Congress' first major action concerning China in 1992 was to finish its consideration of H.R. 2212, the MFN conditionality bill introduced in 1991 which had remained unfinished business at the mid-term recess. With the House having passed the conference report in November 1991, the Senate took it up on February 25, 1992. Floor debate reflected the range of views that had come to characterize the MFN status issue in Congress over the past year. Because of the timetable imposed by the Jackson-Vanik provision, congressional action ostensibly centered around whether to continue MFN status for China with no new conditions (a position held by the Administration) or terminate it altogether (a view espoused by some in Congress). In effect, however, the debate again mainly centered on whether to place further conditions on China's MFN status eligibility other than those freedom-of-emigration restrictions that were already in place.

In arguing for the imposition of new conditions, Senate Majority Leader George Mitchell summed up congressional frustration with the President's policies since 1989, stating "I believe [the Administration's policy] has not succeeded. It has failed. It is time for a stronger policy."²⁷ Other Senators supporting the bill argued that it was necessary given China's "miserable" human rights record, recurring reports that China was making destabilizing arms sales despite assurances to the contrary, and China's burgeoning trade surplus with the United States as a result of its unfair trade practices.²⁸ On the other side, Senator Max Baucus, leader of the group of bipartisan Senators negotiating with the White House, referred to that dialogue as providing the "foundations of a new consensus" over China policy, and said that the Administration's recent initiatives on China were positive and in keeping with congressional concerns.²⁹

The Senate passed the conference report on February 25, 1992, by a vote of 59-39 — five votes short of the two-thirds required to override a veto. As he had promised to, President Bush vetoed the bill on March 2, 1992 — a veto that the House overrode by a wide margin (357-61) on March 11, 1992. The Senate vote to override on March 18 was 60-38 — a wide majority, although insufficient.

Conditioning China's MFN Status: Effort #2. On June 2, 1992, President Bush again made his annual recommendation for authority to extend China MFN status. As in past years, both the Ways and Means Committee and the full House considered a resolution to disapprove the President's recommendation, H.J.Res. 502

²⁷ House floor debate of February 25, 1992, in *Congressional Record*, Vol. 138, Part 3, February 21, 1992 to March 4, 1992. p. 3207.

²⁸ On February 25, 1992, Senator Murkowski inserted in the Congressional Record a series of journal and press articles detailing China's controversial arms sales in the Middle East (S2141 - S2150).

²⁹ Senator Baucus inserted a number of key Administration policy statements in the Congressional Record during the debate of February 25, 1992, including: President Bush's letter of July 19, 1991, delineating his new initiatives (S2134); the President's follow-up report of November 5, 1991, describing the achievements of his engagement strategy in China (S2135); and USTR Carla Hills' letter detailing U.S. trade policy toward China (S2137).

(Solomon).³⁰ But in an indication that the real MFN status debate centered on conditionality, the committee reported the disapproval resolution out on June 30, 1992, without a public hearing and without recommendation. (The Trade Subcommittee had reported the resolution to the full Committee unfavorably the week before, on June 23.)

In its report on H.J.Res. 502 (H. Rept.102-632), the Ways and Means Committee urged the Administration to keep up its pressure on the Chinese government, but also referred to the progress China had made since 1991 on matters of concern to Congress, including lifting some trade barriers, signing a Memorandum-of-Understanding (MOU) on intellectual property rights, and agreeing not to transfer the M-9 or M-11 missiles to countries in the Middle East. After a brief debate, the House passed the resolution on July 21, 1992, by a vote of 258-135. During floor debate, House supporters of the resolution cited the implications of China's unfair trade practices for American jobs; the unfavorable comparison of China's policies with democratization programs in Eastern Europe; and China's repressive human rights policies. The Senate did not consider the resolution.

Immediately after considering the resolution to cut off MFN status, and under the same House rule, the House took up the second conditionality bill that Congress would consider during the year — **H.R. 5318**, the U.S.-China Relations Act.³¹ Although the bill was substantially similar to H.R. 2212, which had been considered only four months before, it differed in some respects, reflecting the efforts of Members to refine and change the bill in ways that would deflect the arguments of its critics and gain the bill some additional support. H.R. 5318 prohibited the President from extending MFN status to China in mid-1993 unless he certified that the Chinese government either had met or had made significant progress toward meeting the following conditions: accounting for and releasing citizens imprisoned for the non-violent expression of their political beliefs during and after the Tiananmen Square crackdown; ending religious persecution in China and Tibet; removing restrictions on freedom of the press and on Voice of America broadcasts; terminating harassment of Chinese overseas; ensuring freedom from torture; ensuring access of international human rights monitoring groups to prisoners, trials, and places of detention; and terminating restrictions on peaceful assembly in China and Tibet.

In addition to these measures, nearly all of which had been contained in previous conditionality legislation, the bill as introduced contained a new provision (Section 5) which provided that even if MFN status were denied to China in the future, it would continue to be extended to “any good that is produced, manufactured, marketed, or otherwise exported by a business, corporation, partnership, qualified foreign joint venture, or other person that is not a state-owned enterprise of the

³⁰ H.J.Res. 502 was introduced on June 5, 1992, by Representative Gerald Solomon.

³¹ For the President's recommendation of the annual extension in 1992, see House Doc. 102-339. H.R. 5318 was introduced on June 3, 1992, by Representative Donald Pease and 71 cosponsors.

People's Republic of China."³² The bill would have required the U.S. Secretary of the Treasury to determine and maintain a list of state-owned enterprises that would be hit with tariffs if China did not meet the conditions specified in the legislation. With this provision, the bill's sponsors hoped to undercut one of the criticisms which the Administration and others had leveled at H.R. 2212, considered just three months earlier — that is, that denial of MFN status would devastate the private entrepreneurs and export industries in China's southern and coastal areas that were among the most democratic-minded and Western-oriented ventures in China. In targeting only state-owned companies for MFN-related sanctions, H.R. 5318 purported to leave non-state-owned ventures eligible to retain MFN status for their exported goods. This new approach also had its critics, primarily those who believed that targeting MFN sanctions to products from specific enterprises would be unenforceable and unworkable.

Supporters of the 1992 bill appeared more confident of eventual enactment. H.R. 5318 was considered quickly by the House; the Ways and Means Committee reported it out by voice vote on July 2, with amendments.³³ The committee-amended version added a human rights objective requiring that China cooperate with the United States in efforts to account for U.S. military personnel listed as prisoners of war or missing in action (MIA) in the Korean or Vietnam wars. The committee also slightly amended the eligibility criteria in Section 5, having to do with provisions for state-owned corporations. The committee report's dissenting views, signed by seven Members, stressed the themes of earlier congressional opposition, including the counterproductivity of isolating China, the economic damage withdrawing MFN status could do to China's coastal regions and to U.S. investors in China, and the importance of keeping China engaged with the world rather than isolated. Under the rule (H. Res. 514), the House considered the Ways and Means Committee amendments en bloc.

In floor debate, the bill's supporters made a number of major points, some based on the objections raised to earlier legislation conditioning MFN status, and many echoing the arguments made during the Ways and Means Committee's consideration of the bill. Supporters argued that the legislation was not meant to withdraw MFN status from China, but to increase pressure on the Chinese government to rethink and change some of its policies. Some Members drew unflattering parallels between China's political system and the peaceful democratic changes that had come to most of Eastern Europe. They strongly objected to the Administration's assertion that U.S. policy since Tiananmen Square had resulted in significant human rights improvements and other changes in China, pointing out that arrests, detentions, and torture in China still continued; in any case, they said, the bill required China to make only "overall significant progress" on human rights issues, not to resolve all human rights abuses.³⁴ Supporters also argued that the bill's new state-owned enterprise provision protected private Chinese enterprises and foreign joint ventures against the

³² The House Ways and Means Committee later modified this language somewhat, although its effects remained essentially the same.

³³ See House Report 102-658, Part I.

³⁴ Quote is from text of H.R. 5318 as reported in the House, Sec. 3(a)2.

bill's conditioning provisions. Finally, they argued that the annual renewal process for MFN status was the strongest American leverage available over the Chinese government.

House opponents of the bill, on the other hand, called it retrogressive. They stated that the United States could not afford to alienate the regime in Beijing because of China's key position as a permanent member of the U.N. Security Council. One Member cited China's strong support for the U.S. position in the United Nations concerning the breakup of Yugoslavia as an indication of China's larger strategic importance for U.S. policy interests. Opponents of the bill also pointed to the Administration's tougher initiatives toward China over the preceding months, characterizing them as surgical instruments to influence Beijing, as opposed to the blunt tool of MFN suspension. Some doubted that the bill's "state-owned enterprise" provision was enforceable, saying that it would be impossible to identify products from China produced by state enterprises. Many stated that their objection to legislation conditioning MFN status for China was not over the goal of the legislation, but over the proposed method of achieving that goal. Some suggested that the bill's supporters might be more interested in protecting U.S. industry from Chinese imports than in fostering political liberalization in China. After debating the measure, the House passed the bill on July 21, 1992 — barely three weeks after the completion of committee consideration — by a vote of 339-62.

The full Senate also acted quickly on the MFN conditionality bill in 1992, taking it up in September, less than two months after the House passed its version and barely three months after the President's June recommendation. On September 14, 1992, the full Senate adopted the Finance Committee amendment to H.R. 5318, which replaced the language of the House bill with that of S. 2808.³⁵ The final Senate-passed version was substantially similar to the House-passed version, the major differences being that the Senate version contained a longer "findings" section, and included provisions that China adhere to the Universal Declaration of Human Rights and fulfill pledges made to Secretary of State James Baker that it would allow dissidents to emigrate.

Although final Senate passage of the MFN conditionality bill was generally a foregone conclusion, the fact that the bill passed by unanimous consent was a surprise. In the previous Congress, it was the margin of the Senate vote that was suspenseful, since the bill would need an affirmative vote of two-thirds in order to ensure override of a certain presidential veto. The Senate's unanimous consent vote meant that President Bush would receive the bill without knowing whether his veto would be sustained, as it had been in the Senate for the past two years, or overridden, which would be a significant defeat.

The Senate unanimous consent action appeared to put extra political pressure on President Bush at precisely the time that he least wanted it — during the home stretch of the presidential campaign when his standing in the polls was precarious. With the end of the session approaching, and since President Bush had indicated he

³⁵ S. 2808 was introduced on June 4, 1992, by Senate Majority Leader George Mitchell and 20 cosponsors.

would “pocket veto” the bill, timing became critical. The Democratic leadership in the House and Senate appeared to coordinate their timing to move the bill through rapidly. Barely a week after the Senate acted, on September 22, 1992, the House took up the Senate-amended version of H.R. 5318. In referring to Senate action on the House floor, Ways and Means Committee Chairman Dan Rostenkowski described the Senate amendment to the bill as having been coordinated closely with the principal House sponsors of the legislation. He urged the House to support the Senate amendment and obviate a conference, saying it would “allow us to expedite the bill to the President.”

With little debate, the House passed the Senate-amended bill by voice vote on the suspension calendar, and the measure was sent to the President, who vetoed it on September 28, 1992, as expected. Although the House overrode the veto on September 30, 1992 (345-74), the Senate vote on October 1, 1992 (59-40) once again failed to achieve the two-thirds majority needed to override. With that vote, the 102nd Congress ended its consideration of the MFN status issue.³⁶

The Clinton Administration

The defeat of President Bush and election of Bill Clinton in the 1992 presidential election, and the high turnover in the U.S. Congress in that election, suggested that the China policy equation of previous years would change. At the very least, it appeared to signal an end to the policy of White House engagement with China. As a presidential candidate, Clinton had charged the Bush Administration with pursuing “an ill-advised and failed policy of constructive engagement with the aging leaders in China.”³⁷ Candidate Clinton had praised the Senate for its passage of H.R. 5318, stating: “The legislation passed today in the Senate proposes a reasonable and carefully designed mix of carrots and sticks to move China in the right direction.” He had urged President Bush to sign the bill.³⁸ That having been the case, many expected the newly elected President to be more responsive to congressional concerns about China’s MFN status.

Initially, in 1993, the President met these expectations by linking China’s MFN eligibility with progress on human rights. The following year, however, the President announced he was “de-linking” MFN and human rights, and since then, the Clinton Administration has pursued a policy of engagement with China similar to that advocated by the Bush Administration. Despite this reversal, the question of China’s

³⁶Throughout the year, however, Congress considered and enacted other bills which dealt separately with some of the measures specified in H.R. 5318, although outside the context of MFN status. For instance, Congress passed the Hong Kong Policy Act of 1992 (P.L. 102-383); enacted amendments broadening presidential authority to impose sanctions on China’s non-proliferation violations (see Helms Amendment to P.L. 102-138, the State Department Authorization bill, S. 1433); and supported measures to establish a surrogate broadcasting system to China — Radio Free Asia.

³⁷From *Statement by Governor Clinton on Most Favored Nation Status for China*, National Campaign Headquarters, Little Rock, Arkansas. September 14, 1992. p. 1.

³⁸Ibid, p. 2.

MFN status has never regained the prominence in U.S. policy debates that it briefly had during the Bush Administration. Instead, Members have increasingly turned to alternative measures in pursuing their policy disagreements with the White House. In recent years, allegations of illegal Chinese campaign contributions and alleged technology transfers by U.S. aerospace corporations have caused congressional attention to expand beyond its traditional primary focus on Chinese actions and policies to a greater scrutiny of decisions and actions by Administration officials and the President.

103rd Congress — 1993-1994

In 1993, at his first opportunity to deal with the MFN status extension issue, President Clinton announced he would link China's MFN status in future years to Beijing's ability to achieve real progress on human rights, non-proliferation, and other issues — the “conditionality” that the 101st and 102nd Congresses had been urging. Members in 1993

indicated general satisfaction with the new President's action, and Congress took no action on China's MFN status in 1993. In 1994, Clinton reversed his policy, announcing that he was “de-linking” MFN status from human rights matters. Although China's MFN status has periodically resurfaced as an issue for Congress since then, so far during the Clinton Administration, there has been no congressional action on China's MFN status approaching the extent and scope of that taken by the 102nd Congress.

1993 — Major MFN Legislation

H.J.Res. 208, Disapproving MFN

H.R. 1835, Further Conditions on China's MFN Status

S. 806, Further Conditions on China's MFN Status

1994 — Major MFN Legislation

H.J.Res. 373, Disapproving MFN

H.R. 4590, Further Conditions on China's MFN Status

1993 — “Linkage” of MFN and Human Rights. Shortly after the Clinton Administration assumed office, on March 10, 1993, Secretary of State Warren Christopher testified before a House Appropriations Subcommittee and signalled the impending change the new Administration was planning on U.S. policy on China.³⁹ China's MFN status should be extended, he said, “but conditioned on their making very substantial progress” on human rights and unfair trade practices. By all indications, Members expected the new President to be much more sympathetic than Bush to congressional frustrations with the overall direction of U.S. China policy.⁴⁰ On April 22, 1993, Senator Mitchell and Representative Pelosi again introduced legislation restricting normal trade relations with China, although both expressed the hope that the legislation would not be needed. The bills (H.R. 1835 and S. 806, both

³⁹Secretary Christopher gave his testimony before the House Appropriations Subcommittee on Commerce, State, and the Judiciary.

⁴⁰Bluntly summing up congressional sentiment, Senator Jesse Helms told former Ambassador Winston Lord at a Senate Foreign Relations Committee hearing on March 31, 1993, “The previous Administration botched the job (on China policy)....” *Congressional Quarterly*, April 3, 1993, p. 855.

titled The United States-China Act of 1993) were substantially the same as those of the previous year, including language on unfair trade practices, proliferation activities, human rights, and the provision targeting potential MFN sanctions to state-owned enterprises only. In addition, the 1993 bills placed more emphasis on the political situation in Tibet.

Executive Order 12850. On May 28, 1993, newly elected President Clinton issued Executive Order 12850 stating that he would consider human rights issues in making future recommendations for MFN status for China.⁴¹ While issues such as non-proliferation and security concerns had factored into past congressional actions on China's MFN status, in essence, the 1993 Clinton decision linked China's MFN status exclusively with human rights issues, in addition to the emigration rights issues already imposed by Jackson-Vanik. Other, unrelated issues, said the President, would be pursued on separate tracks.

Under the Executive Order, the Secretary of State could not recommend to the President an extension of China's MFN treatment in 1994 unless he determined (1) that China had abided by its 1992 agreement with the United States to halt exports of prison labor products to the United States, and (2) that an extension would substantially promote the free-of-emigration objectives in the Jackson-Vanik amendment to the 1974 Trade Act. In addition to certifying to the above requirements in making his recommendation, the Secretary would have to determine whether China had made overall significant progress in human rights, including:

- ! adhering to the Universal Declaration of Human Rights
- ! releasing and acceptably accounting for political prisoners
- ! ensuring humane treatment of prisoners
- ! protecting Tibet's religious and cultural heritage, and
- ! permitting international radio and television broadcasts into China.

The Executive Order further stated that the Administration would pursue other legislative and executive actions (unrelated to MFN status) to ensure that China complied with trade agreements and adhered to the Non-Proliferation Treaty (NPT), Missile Technology Control Regime (MTCR), and other nonproliferation commitments. In his accompanying Report to Congress, the President reiterated his campaign theme that human rights was "a cornerstone of [the Administration's] foreign policy."

On the whole, the immediate congressional reaction to the Clinton MFN status decision was positive. Both Mitchell and Pelosi commended the President for his decision, and expressed their support for the President's Executive Order over their own bills. In effect, the Clinton decision suspended the MFN conditionality debate

⁴¹The President's decision reflected many of the themes and approaches articulated in an April 1, 1993 speech to a business group by Representative Lee Hamilton. Hamilton suggested that the United States change China through diplomacy, and advised the Administration to pursue a policy of diplomatic pressure, including holding China to its economic and proliferation commitments, and emphasizing civil liberties in pressing human rights concerns.

in Congress for the remainder of the year; neither the Pelosi nor Mitchell bill was reported out of committee or considered on the floor.⁴²

Some Members, however, did not think the President's decision to condition China's future MFN status went far enough. Representative Gerald Solomon, who had introduced previous joint resolutions to disapprove MFN status altogether, did so again on June 8, 1993, introducing H.J.Res. 208 (H. Rept. 103-167).⁴³ But congressional inclinations had changed in view of the President's decision. Both the Trade Subcommittee and the full Ways and Means Committee reported the Solomon resolution out adversely — the latter, by a vote of 35-2 (H. Rept. 103-167). The House, which only the previous year had approved a resolution disapproving MFN status by a margin of 123 votes, rejected H.J.Res. 208 on July 21 by a vote of 105-318. In floor debate on the joint resolution, Rep. Rostenkowski summed up congressional sentiment:

...the President has heeded the Congress' message on China's MFN extension. Through his Executive Order, Mr. Clinton has embraced and implemented the conditional MFN policy endorsed by the overwhelming majority of House Members who voted "yes" on conditional China MFN bills in the past.⁴⁴

No joint resolution of disapproval was introduced in the Senate, and the House rejection of its joint resolution made the question of Senate consideration moot. For all practical purposes, the debate over China's MFN status in 1993 appeared to have been settled by the President's Executive Order. Most policy observers felt that the President would have little trouble the following year in certifying that China had made sufficient progress on human rights matters to retain its MFN status.

Change in Clinton Policy in 1993. The breathing spell that the President's May 1993 MFN status decision bought for the U.S. policy process and for U.S.-China relations lasted less than three months. By late summer, several of the long-standing irritants in the relationship flared up again. Although Chinese officials released Wei Jingsheng, China's most publicized political prisoner, 6 months before the end of his 15-year prison sentence, they also summarily expelled Han Dongfang, a labor activist

⁴²Mitchell made positive comments on the President's decision on May 28, 1993, *Congressional Record*, p. S6894, and Pelosi did so on June 10, *Congressional Record*, p. H3437. In addition, Pelosi submitted for the *Record* the relevant text of the President's Executive Order (p. H3438).

⁴³In a statement he issued announcing his decision, Representative Solomon said, "For me, this has been such a deep moral issue that I have been compelled to go against my own Republican presidents. Now that President Clinton has apparently abandoned his campaign rhetoric, I will go against him, as well." Cited in *Congressional Quarterly*, May 29, 1993, p. 1349. Eight additional cosponsors of H.J.Res. 208 included Representatives Markey, King, Frank, Abercrombie, Rohrabacher, Applegate, Molinari, and Diaz-Balart.

⁴⁴Representative Rostenkowski in floor debate on H.J.Res. 208, *Congressional Record*, July 21, 1993, p. H4868.

during the Tiananmen Square demonstrations.⁴⁵ On August 24, the Administration determined that China had transferred M-11 missile-related technology to Pakistan in 1992 in violation of MTCR guidelines, which China had promised to honor. In September, China lost its bid to host the 2000 Olympics, blaming that loss on strong U.S. (and, in particular, congressional) opposition to the bid. On October 5, China conducted an underground nuclear test, ignoring the informal unilateral moratorium that the United States had called for on July 3 and that other nuclear powers were honoring. By then, Members of Congress were openly speculating about and discussing the potential economic effects of disapproving MFN status for China.⁴⁶

As a series of U.S.-China confrontations developed over human rights and weapons proliferation throughout the year, neither the United States nor China appeared to be pursuing consistent policies. The relationship, far from being stabilized by the MFN status decision, had eroded further with a rapidity that startled most observers. In September 1993, it became increasingly evident that the Clinton Administration was reassessing its policy approach to China, primarily out of concern that the President would not be able to renew China's MFN status in 1994 unless the downward spiral in relations were halted and China's human rights record were significantly improved. According to press reports, President Clinton signed a classified "action memorandum" in mid-September 1993 which defined the new policy direction. Although the White House did not formally announce a policy change or articulate its terms, the U.S. Deputy Assistant Secretary of State for East Asia at the time, Peter Thomsen, termed the new approach a policy of "comprehensive engagement." By October 1993, a procession of high-level U.S. officials began to visit China, and in November, President Clinton met with China's President, Jiang Zemin, at the Asia-Pacific Economic Cooperation (APEC) conference in Seattle.⁴⁷

1994 — Clinton Decision to "De-Link" MFN Status. Early in 1994, it was evident that Administration officials were increasingly concerned that China's lack of progress on human rights would complicate the President's impending MFN status decision. On February 1, 1994, the State Department released its annual report on human rights (covering 1993) in which it concluded that although China had made "limited progress" (primarily with releases of some political prisoners), China's "overall human rights record in 1993 fell far short of international accepted norms..." In presenting the State Department report to Congress, State Department Counselor Tim Wirth said of China's impending MFN status renewal, "We must see significant

⁴⁵Since releasing Wei Jingsheng, China has also rearrested and re-released him.

⁴⁶Withdrawal of MFN status would have raised U.S. tariffs on Chinese imports from an average of about 7.5% to an average of about 45%.

⁴⁷Official U.S. visits to China in 1993 were made by Assistant Secretary of State for Human Rights, John Shattuck (Oct. 12); Secretary of Agriculture Mike Espy (Oct. 15); Deputy U.S. Trade Representative Charlene Barshefsky (Oct. 23); and Assistant Secretary of Defense Charles Freeman (Nov. 1).

progress before we renew. Limited progress does not meet significant progress.”⁴⁸ High-level U.S.-China contacts continued in early 1994, with Secretary of State Christopher taking a message to Beijing on March 11, 1994, that China needed to make rapid further progress on human rights in order to satisfy the conditions of Clinton’s 1993 Executive Order.

Ultimately, the Administration determined that the limited progress China may have made on human rights was insufficient to meet even a generous interpretation of the President’s 1993 Executive Order. In a press conference on May 26, 1994, President Clinton announced that although “the Chinese did not achieve overall significant progress in all the areas outlined in the [1993] Executive Order...” he nevertheless had decided that the United States should renew China’s MFN trading status in spite of that fact.⁴⁹ Furthermore, the President stated that he was going to “de-link” human rights from China’s MFN status, saying,

That linkage has been constructive during the past year. But I believe, based on our aggressive contacts with the Chinese in the past several months, that we have reached the end of the usefulness of that policy...

As in 1993, the President seemed mindful of congressional concerns about key issues with China. Rather than simply announcing the “de-linkage” and leaving it at that, the President also announced that in view of “the continuing human rights abuses” in China, he was “extending the sanctions imposed by the United States as a result of the events in Tiananmen Square.”⁵⁰ He said he was also: banning imports of Chinese arms and ammunition; encouraging multilateral human rights efforts; expanding U.S. international broadcasting programs targeting China; and establishing a new program of U.S. support for human rights and democracy in China. That program was to include increased broadcasts for Radio Free Asia and the Voice of America; increased support for non-governmental organizations (NGOs) working on human rights in China; and working with American businesses to develop a set of voluntary principles for business activity in China. Over the next few months, the Administration sought to minimize the debate over the President’s MFN status decision by emphasizing these additional punitive measures.

Congressional Reaction. Despite the President’s reversal, the dynamics in Congress in 1994 had obviously changed. The sentiment for total denial of MFN

⁴⁸*Congressional Quarterly*, February 5, 1994, p. 258.

⁴⁹From the President’s May 26, 1994 news conference, cited in *Public Papers of the Presidents of the United States: William J. Clinton*. Book II, 1994, p. 1166.

⁵⁰The so-called “Tiananmen sanctions” include the following provisions of P.L. 101-246: suspension of military equipment and weapons sales; prohibitions on exports of satellites; suspension of Overseas Private Investment Corporation (OPIC) and Trade Development Agency (TDA) funding for programs in China; prohibition of export licenses for crime control and detection equipment; termination of U.S. support for multilateral development bank loans to China except in cases of basic human need; and prohibitions on nuclear energy cooperation. The prohibition on nuclear energy cooperation was lifted on January 12, 1998; the other sanctions remain in place.

status was significantly lower than it had been in the 102nd Congress. President Clinton was seen to be more determined than his predecessor to make human rights issues a continuing priority in dealing with China. Pro-business Members, free traders, and Members representing agricultural constituencies generally applauded the President's decision as fundamentally sound. As one Member put it, "The President decided to avoid an unnecessary confrontation....That is in our fundamental, long-term interest."⁵¹

Nevertheless, a bipartisan congressional coalition objected to the President's "delinkage" decision, arguing for tougher measures against China.⁵² The key proponents of MFN conditionality in the past, who still favored imposing greater leverage on China, searched for MFN-related proposals that offered more surgical retaliation than the overall MFN conditionality measures considered in the previous Congress. Members began looking at proposals that targeted MFN-related sanctions against specific Chinese enterprises or industrial sectors, for instance, rather than measures that put broad-based conditions on China's eligibility for MFN status.

As in past years, Congress in 1994 considered two approaches: outright denial of MFN status through a joint resolution of disapproval (**H.J.Res. 373**) and legislation which placed further conditions on China's future MFN eligibility (**H.R. 4590**). The House of Representatives considered both sets of measures on the same day, August 9, 1994. The joint resolution of disapproval — **H.J.Res. 373** — was introduced on June 8 by Representative Solomon. As it had in 1993, the House Ways and Means Committee had voted by a wide margin (31-6) to report the resolution unfavorably to the House.⁵³ But the House now appeared strongly opposed to denying MFN status, rejecting the joint resolution of disapproval on August 9 by a vote of 75-356. This effectively killed the measure for 1994. No joint resolution of disapproval was considered in the Senate.

In accordance with the rule (H.Res. 509), after defeating the joint resolution of disapproval, the House immediately turned to MFN conditionality legislation, the United States-China Act of 1994, **H.R. 4590**, introduced on June 16, 1994, by Representatives Pelosi, Bonior, and Gephardt.⁵⁴ H.R. 4590 had been adversely reported by the House Ways and Means Committee on August 1, 1994 (H. Rept. 103-640). Essentially, the rule, H.Res. 504, made two alternatives in order. The first was the Pelosi/Bonior/Gephardt bill itself, which would have required the Secretary of

⁵¹Sen. Baucus, quoted in *Congressional Quarterly*, May 28, 1994, p. 1372.

⁵²Senior House Opponents of the Clinton decision included Majority Leader Gephardt, Majority Whip Bonior, and Representatives Pelosi, C. Smith, and Solomon. In addition to Senator Baucus. Senior Senate opposition included Senator Mitchell.

⁵³The Committee reported H.J.Res. 373 unfavorably on June 30, 1994, by a vote of 31-6 (H.Rept. 103-575).

⁵⁴Another bill, H.R. 4832 (introduced by Representatives Kaptur, Pelosi, Solomon, and Bentley on July 26, 1994) would have imposed full duty rates on China, but subject to reduction by the President in proportion to China's progress on environmental issues and worker rights protection. The bill, referred to the House Ways and Means Committee, was not acted upon.

State to encourage American businesses to adopt the voluntary code of conduct mentioned above. The bill had two additional provisions which essentially would have limited the measure's punitive effects. First, it declared that even if Congress passed a joint resolution of disapproval, MFN status would be denied only to those imported products that are produced, manufactured, or exported by Chinese state-owned enterprises. Second, it declared that if Congress did not pass a joint resolution of disapproval, MFN status would not be extended to imports of goods made or exported by the Chinese military or a defense industrial trading company, or to goods in most major product categories made or re-exported by Chinese state-owned enterprises.

The second alternative provided for by the rule was a substitute amendment to H.R. 4590, offered by Representative Hamilton, which in effect codified the President's May 26, 1994 decision recommending that MFN status be extended to China.⁵⁵ (The Hamilton substitute, however, did not include language to codify the President's initiative to prohibit imports of Chinese arms and ammunition.) The Hamilton substitute was considered first, and the House adopted it by a vote of 280-152. In the second vote, the House rejected the Pelosi substitute (158-270) amendment, thereby endorsing the President's position on MFN status for China and effectively ending the MFN debate for the year. The Senate took no action on H.R. 4590, nor on several related bills introduced by Senate Members.⁵⁶

104th Congress — 1995-1996

U.S.-China relations deteriorated markedly during the 104th Congress. While a number of factors contributed to bilateral political difficulties, none had the catalytic impact of President Clinton's decision of May 22, 1995, made as a result of heavy congressional pressure, to issue a visa for Taiwan's

1995 — Major MFN Legislation

H.J.Res. 96, Disapproving MFN

H.R. 2058, U.S.-China Policy Act of 1995

1996 — Major MFN Legislation

H.J.Res. 182, Disapproving MFN

H.Res. 461, Human Rights and Other Issues In China

President, Lee Teng-Hui, to attend a reunion at Cornell University, his alma mater.⁵⁷ China objected strongly, temporarily calling its ambassador home from the United States and initiating a vigorous campaign to discredit President Lee's policies in Taiwan. In August 1995, and again in March 1996, China held a series of naval exercises and provocative, live-fire missile tests in the strait off the coast of Taiwan. The United States responded to the 1996 missile tests by sending two carrier battle groups to the area — the most serious confrontation in U.S.-China relations since normalization of relations in 1978.

⁵⁵The report on the rule was H.Rept. 103-673.

⁵⁶Senate conditionality bills in 1994 included S. 806, S. 1034, S. 1065, and S. 2260.

⁵⁷Congressional pressure included the almost unanimous passage of a resolution urging the President to issue the visa to Lee Teng-hui — H.Con.Res. 53 (Lantos), which the House passed on May 2, 1995 (396-0), and which the Senate passed on May 9, 1995 (97-1).

In addition to the crisis over Taiwan, there were other sources of political acrimony in U.S.-China relations during the 1995-1996 timeframe. During the time period, for instance, Chinese officials detained Harry Wu when he tried to enter China on June 19, 1995, although he had a valid American passport and a Chinese visa. Wu, a human rights activist, was convicted of spying and expelled from the country on August 25, 1995. The 4th U.N. International Women's Conference, held in Beijing on September 4, 1995, with Hillary Rodham Clinton in attendance, was controversial because non-governmental groups advocating women's rights were relegated to a site far out of Beijing, away from the main official conference. On November 29, 1995, China rejected the boy the Dalai Lama had chosen for Panchen Lama, the second-ranking Buddhist official in Tibet. Chinese officials spirited the boy away into seclusion, and there has been no word since then of his welfare or whereabouts. Finally, in a controversial decision on May 10, 1996, the United States declared it would not impose sanctions on China because of Chinese sales to Pakistan of "ring magnets," which are used in uranium enrichment.

But greater tensions in U.S.-China relations during these two years did not appear to translate into greater policy tensions in the United States over China's MFN status. Congress chose not to interrupt or alter China's MFN status. Although the 104th Congress continued to search for ways to affect developments in China or gain leverage over the U.S. policy process, Members appeared to have become disillusioned with the prospects for putting further conditions on China's MFN status. Congress remained unwilling to withdraw MFN status altogether, while the debate on conditionality, rancorous in the past, became barely noticeable in 1995.

In 1996, the U.S. presidential campaign also played a role in the debate on China's MFN status. Senator Bob Dole, who had resigned from the Senate to challenge Clinton for the presidency, came out in support of Clinton's decision to renew China's MFN status. The Dole decision was a blow to conservative Republican opponents of Clinton Administration policy toward China, and helped deflect more intense congressional consideration during the presidential election year.

1995 — Decline of MFN, Search for Alternatives. In response to the President's 1995 recommendation to extend MFN status (made on June 2, 1995), House Members changed tactics from previous years. On June 16, 1995, a joint resolution of disapproval was still introduced — **H.J.Res. 96**, by Representative Wolf. But rather than take up another MFN conditionality bill, the House turned to a bill introduced by Representative Bereuter (**H.R. 2058**, the U.S.-China Policy Act of 1995) as a compromise to either denying MFN status outright or placing further conditions on China's MFN status. Beginning a pattern set in 1991, both bills were made in order by the same rule, H.Res. 193.

The Bereuter bill acknowledged China's international importance in regional and global institutions, and acknowledged China's rapidly growing domestic economy and economic power. The bill also criticized China for its continuing human rights record; specifically criticized the "unjustified and arbitrary arrest" of American citizen Harry Wu and called for his unconditional release; blasted China for its continuing unfair trade practices; and called for reduction of China's tensions with Taiwan. In addition, the bill required, within 30 days of its enactment, a

detailed plan for the establishment and operation of Radio Free Asia, with the goal of beginning broadcasting in another 60 days.

The MFN debate in 1995 signalled Congress' continuing frustration with Beijing's policies and demonstrated a level of consensus among U.S. policymakers that had been missing in recent years. Clinton Administration officials supported H.R. 2058, warning that the "Chinese government should read loud and clear the impatience on the part of the Congress and the part of the Administration."⁵⁸ The intervention of House Speaker Newt Gingrich appeared to bring together the sponsors of the alternative bills. Representative Wolf, who had introduced the joint resolution of disapproval, announced his support of the Bereuter measure, and made the floor motion to table his own resolution; the motion to table passed 321-107.⁵⁹

As a result, H.R. 2058 passed the House July 20, 1995, by a vote of 416-10. Since the bill was never taken up by the Senate, consideration of the MFN status issue in 1995 ended with the July House vote.

1996 — An Uneasy, Non-Binding Compromise. By late spring of 1996, with U.S.-China relations at the lowest point in recent memory, Clinton Administration officials wrestled with the difficult challenge of trying to protect U.S. interests in Taiwan while avoiding further confrontation with China. Congressional critics remained frustrated with Chinese behavior, but also with what some were beginning to describe as White House "policy flip-flops" on China. Again, Congress ultimately was unwilling either to disapprove or place further conditions on China's MFN status. Only the House acted in 1996 on legislation relating to China's MFN status; the Senate took no action.

In what had become a ritualistic presidential exercise since normalization of relations, President Clinton on June 2, 1996, issued his recommendation for renewal of China's MFN status. On June 18, 1996, the House Ways and Means Committee adversely reported H.J.Res. 182, a joint resolution introduced by Representative Rohrabacher, which disapproved the extension of MFN treatment for China. The Committee vote of 31-6 was described by the Chairman, Representative Bill Archer, as "overwhelming[ly] bipartisan."⁶⁰

One controversial issue in the 1996 House debate concerned the rule, H.Res. 463, by which H.J.Res. 182, the joint resolution of disapproval, was brought to the House floor. Opponents of MFN extension had wanted to use the opportunity to vote also on separate legislation targeting China's behavior, similar to the conditionality bills in previous years. A number of such bills had been introduced — among them,

⁵⁸U.S. Trade Representative Mickey Kantor, quoted in the *Congressional Quarterly*, July 22, 1995, p. 2158.

⁵⁹Speaking on the House floor, Wolf praised Pelosi and thanked Bereuter "for his willingness to kind of work this out," and he went on to "thank the Speaker personally because his involvement made a difference." *Congressional Record* floor debate, July 20, 1995, p. H7272.

⁶⁰Ways and Means Committee Chairman Bill Archer, speaking on the House floor on June 27, 1996, about the Committee's action (H. Rept. 104-634). *Congressional Record*, p. H6985.

H.R. 3569 (Cox), a bill linking China's MFN status with Taiwan's accession to the WTO by March 1, 1997; H.R. 3577 (Solomon), a bill reducing the U.S. contribution to international financial institutions providing direct or indirect assistance to China; and H.R. 3684 (Gilman), a bill prohibiting imports of goods made by the People's Liberation Army or by China's defense industrial trading companies.⁶¹ But the request for simultaneous consideration of these other measures was reportedly denied by the House Republican leadership, and the rule for MFN debate provided only for consideration of the joint resolution of disapproval and one compromise non-binding measure.⁶² The move prompted severe criticism from some MFN opponents, one of whom called it "an act of cowardice."⁶³ Republican opponents of MFN downplayed the House leadership decision during floor debate on H.J.Res. 182.

In his opening statement in opposition to disapproving MFN for China, Ways and Means Committee Chairman Bill Archer foreshadowed the arguments of other MFN supporters, saying that granting MFN to China was important for economic, human rights, and national security reasons. On the latter, he made a common argument that the United States would be in a position to influence China in such sensitive areas as North Korea, weapons proliferation, and territorial claims in the South China Sea. Rep. Pete Stark based an opposing argument on national security grounds as well, saying that China could not be trusted to adhere to international norms, and that China has been "caught red-handed sending materials to create nuclear weapons — last year to Iran and this year to Pakistan. World peace threatened, just to make a buck."⁶⁴ After two hours of debate, the House rejected H.J.Res. 182 by a vote of 141-286. The Senate did not consider a joint resolution of disapproval.⁶⁵

Immediately thereafter, as specified by the rule (H.Res. 463), the House took up the non-binding compromise measure, **H.Res. 461**, introduced by Representative Chris Cox. As stated in the rule, the Cox resolution dealt with "human rights abuses, nuclear and chemical weapons proliferation, illegal weapons trading, military intimidation of Taiwan, and trade violations by the People's Republic of China and the People's Liberation Army."⁶⁶ The resolution directed four House committees to hold hearings on these subjects and, "if appropriate," to report back pertinent

⁶¹H.R. 3577 was referred to the House Banking Committee; the other two were referred to the Ways and Means Committee. Both committees traditionally have been reluctant to support trade or financial restrictions for China, and neither took any action on the legislation.

⁶²See *The Congressional Quarterly*, June 29, 1996, p. 1881.

⁶³From an interview given by Representative Pelosi, cited in *The Congressional Quarterly*, June 29, 1996, p. 1881.

⁶⁴Representative Pete Stark, floor debate on June 27, 1996, *Congressional Record*, p. H6986.

⁶⁵Senator Helms introduced a joint resolution of disapproval, S. J.Res. 56. It was referred to the Senate Finance Committee, which took no action.

⁶⁶The language quoted is from Sec. 2 of the rule, H.Res. 461, June 27, 1996.

legislation no later than September 30, 1996.⁶⁷ Representative Cox indicated that he had the commitment of the House leadership to bring any such legislation to the House floor. In his opening statement, Representative Cox referred to the resolution of disapproval that the House had just rejected, and posed the question to his colleagues, "...if not MFN, then what? What is our policy?"⁶⁸ The House ultimately passed the resolution by a wide margin, 411-7. The Senate had no comparable resolution.

The 104th Congress adjourned without having either disapproved of or placed further conditions on China's eligibility for MFN status. Nevertheless, House passage of the non-binding H.Res. 461 helped set the stage for additional efforts in 1997 to target congressional actions on specific issues involving Chinese behavior rather than on China's eligibility for MFN status.

105th Congress — 1997-1998

During the 105th Congress, it became clear that momentum in the U.S. policy debate on China had shifted substantially away from using MFN as a tool and had turned instead to the consideration of other legislative vehicles to influence U.S. and Chinese policy decisions. Only joint resolutions of disapproval for MFN were considered by the 105th Congress, and these were only considered in the House. They were also rejected by wide margins compared to previous years when alternative MFN bills were introduced.

1997 — Major MFN Legislation
H.J.Res. 79, Disapproving MFN

1998 — Major MFN Legislation
H.R. 2676, IRS Restructuring (changing MFN name to Normal Trade Relations — NTR)
H.J.Res. 121, Disapproving MFN

In retrospect, much about the U.S.-China relationship at the beginning of 1997 appeared destined to improve its prospects. The MFN debate in 1996 had been minimal and relatively congenial. American policymakers spent the first half of 1997 focusing on Hong Kong's reversion to China, which occurred smoothly on July 1. The death early in the year of China's paramount leader, Deng Xiaoping, was uneventful, contrary to some expectations of destabilizing political infighting. During the initial stages of the Asian financial crisis, China was viewed as acting responsibly by not devaluing its currency, the renminbi (RMB) — a move that was welcomed by the United States. Throughout the time period, Administration officials appeared increasingly convinced that China had assigned a high priority to good relations with the United States. U.S. officials also believed that China had made important shifts in its willingness to abide by international agreements, such as deciding to minimize its nuclear cooperation with Iran. Consequently, when

⁶⁷The committees were: International Relations (China-related hearings were held on September 12 and 19, 1996); National Security (hearings on September 27); Ways and Means (September 19); and Banking and Financial Services (July 29). The committees were not required to report out legislation.

⁶⁸From floor debate on June 27, 1996, *Congressional Record*, p. H7028.

Chinese President Jiang Zemin came to Washington for the first U.S.-China summit in ten years, on October 27, 1997, President Clinton announced that he was prepared to move forward on a range of bilateral issues in the coming months, including initiating U.S. nuclear energy cooperation with China under the terms of a nearly moribund 1985 bilateral agreement.

But unexpected challenges to the relationship also surfaced in 1997, and these and other problems intensified late in the year and continued into 1998. The State Department report on human rights that was released January 30, 1997, accused China of silencing virtually all public dissent in 1996 through intimidation, exile, imposition of prison terms, administrative detention, or house arrest. In the face of such human rights reports, some Members of Congress were unimpressed by China's October 1997 summit decision to sign the U.N. International Covenant on Economic, Social, and Cultural Rights — something U.S. policymakers long had been urging.

In February 1997, U.S. news sources began reporting that officials of the Chinese government — and in particular of the Chinese military — had made illegal contributions to U.S. political campaigns in the 1996 elections. Congress began investigating these allegations, and the investigations were later expanded into whether these alleged contributions had influenced Clinton Administration decisions about China. Pressure on the Administration increased in April 1998, when it was revealed that Space Systems Loral, a U.S. aerospace company, may have illegally transferred sensitive information to China in 1996 concerning missile guidance and control systems. Additional pressure came from critics who believed that Chinese assistance was a key factor in Pakistan's sudden emergence as a confirmed nuclear power.⁶⁹ Because of these continuing controversies, the House late in 1997 passed a series of China-related bills unrelated to MFN status, and congressional critics continued to target the Clinton Administration's policy of engagement with China, pressuring the White House to take a firmer, more sanctions-oriented approach.

It was in this atmosphere of controversy that the President made his planned summit visit to China from June 25-July 3, 1998. The summit got mixed reviews. Members of Congress criticized the President for agreeing to Tiananmen Square, the site of China's 1989 bloody military crackdown, as the site for the official welcoming ceremony. Some criticized the summit as lacking in substance. Others were pleased by the unprecedented live coverage that Chinese television and radio gave to several presidential appearances, including a joint press conference between Clinton and Chinese leader Jiang Zemin, where the President was able to speak directly to the Chinese people about U.S. human rights concerns. The most controversial moment of the summit came at a roundtable discussion in Shanghai, when the President made a statement about U.S. policy toward Taiwan: that the United States did not support independence for Taiwan; did not support a two-China policy; and did not believe Taiwan should be a member of international organizations

⁶⁹In response to nuclear tests by India earlier in the month, Pakistan detonated 5 nuclear devices on May 28, 1998. For years, China had been suspected of clandestinely helping Pakistan in its nuclear weapons program.

where statehood is a prerequisite. The statement was criticized by some in the United States as a departure from past policy.⁷⁰

1997 — Joint Resolution of Disapproval. The 105th Congress first began to deal with the MFN issue after May 29, 1997, the date President Clinton made his recommendation for renewing MFN status. Continuing previous trends, the debate over whether to disapprove China's MFN status was heated but almost formulaic, with what many assumed was a foregone conclusion. As one House Ways and Means Committee Member put it, "We all know we won't revoke MFN. This is a debate amongst ourselves, with no real value whatsoever."⁷¹ The only new twist to the traditional debate over the joint resolution of disapproval involved a question of timing. Early in the debate, several Members, among them Speaker of the House Newt Gingrich, floated the idea of a temporary 3 to 6 month extension of China's MFN status.⁷² It was the first time that an extension of less than one year had been proposed, and its proponents thought that the move would give American policymakers time to assess how China was handling the reversion of Hong Kong to Chinese sovereignty on July 1, 1997. But MFN supporters objected to a short-term extension, and the idea was soon dropped.

As expected, on June 20, the House Ways and Means Committee adversely reported a joint resolution of disapproval, H.J.Res. 79 (Solomon).⁷³ The vote was 34-5. This time, no rule was adopted. Instead, the resolution was brought to the House floor under a unanimous consent agreement.⁷⁴

In floor debate on June 24, 1997, MFN opponents based their case largely on human rights and proliferation concerns. Representative Bunning inserted into the *Congressional Record* a letter from the International Federation of Chinese Students and Scholars (IFCSS), a group claiming a sizeable membership of Chinese students in the United States, asking that Congress make human rights improvements a condition of China's eligibility for MFN treatment. Some congressional opponents argued that MFN for China was a job loser for American workers. Representative Pelosi stated that "United States jobs are being lost through the Chinese Government's practices of requiring technology and production transfer."⁷⁵

MFN supporters for "constructive engagement" with China also based much of their argument on economic and human rights concerns. Representative John

⁷⁰The text of the Shanghai roundtable discussion of June 30, 1998, can be found at <http://www.whitehouse.gov/WH/New/China/speeches.html>

⁷¹Representative Robert Matsui, quoted in *The Congressional Quarterly*, June 21, 1997, p. 1463.

⁷²Other Members proposing short-term extensions of MFN in 1997 included Senator Connie Mack and Representative John Boehner.

⁷³House Report 105-140.

⁷⁴The unanimous consent request was made by Representative Solomon, author of the resolution and chairman of the Rules Committee. *Congressional Record*, June 23, 1997, p. H4166.

⁷⁵Floor debate, *Congressional Record*, June 24, 1997, p. H4236.

Boehner defended MFN for China by recalling recent historical trends in Taiwan and South Korea:

Twenty years ago both of those countries had brutal dictatorships, lack of religious freedom, lack of any kind of democratic freedom. Today both nations have popularly elected Presidents...real democracy. Where did the democracy...come from? It come through expanded trade, expanded economic freedom...because the United States was engaged economically...⁷⁶

The House rejected the joint resolution by a vote of 173-259. A comparable Senate resolution, S.J.Res. 31 (Helms) was never considered by the Senate Finance Committee or by the Senate. Unlike previous years, no sweeping legislation was considered that would have imposed further conditions on China's MFN status.

1998 — Joint Resolution of Disapproval. On June 3, 1998, President Clinton made his recommendation that MFN status be extended to China for another year. The following day, on June 4, 1998, Representative Solomon introduced H.J.Res. 121, a joint resolution of disapproval. Once again, no "alternative" MFN-related bill was introduced that would have placed further conditions on China's MFN status. Given the trends of the previous few years, there was little expectation that Congress would pass the joint resolution and revoke China's MFN status. Apart from the joint resolution of disapproval, the House was relatively unlikely to consider many other China-related issues for the balance of 1998, since it had passed the package of approximately one dozen China-related bills late in 1997, most of which were still pending in the Senate. For its part, although the Senate was likely to consider part or all of the House package of China bills, past trends suggested that that body was unlikely to devote any time to the question of China's MFN status.

Early in the MFN debate, key House leaders wrote a letter to President Clinton, expressing their views on a range of issues involving U.S. relations with China. The letter illustrated the degree to which the debate on China had evolved to include an important congressional sentiment in favor of insulating the question of MFN status from other issues in the U.S. debate on China. After referring to impending congressional investigation of illegal campaign contributions by the People's Liberation Army, and to possible transfers of satellite launch technology to China, the letter said:

As you know, those of us in Congressional Leadership positions have pledged to carry out this investigation as fairly and expeditiously as possible. At the same time, however, we reaffirm our commitment to what we see as a separate goal of preserving normal, most-favored-nation (MFN) trade relations with China. We intend to insist as forthrightly as we have done in the past that America's best strategy for promoting lasting democratic change in this repressive society is through the free

⁷⁶Ibid, p. H4246.

exchange of goods and services in the context of an open MFN trade relationship.⁷⁷

On July 20, 1998, the House Ways and Means Committee adversely reported H.J.Res. 121 to the House (H. Rept. 105-638). The House considered the measure on July 22, 1998, defeating it by a vote of 166-264. The eventual defeat of the resolution had been anticipated. As one strong House opponent of MFN put it during the debate, "We are not going to take away MFN...We know the Senate will not do it. We know the President would never sign it. So this is not a vote for engagement or disengagement or taking away MFN. It is a vote to send a message."⁷⁸ With the approval of both houses needed for the joint resolution, the House vote effectively ended the 105th Congress' consideration of China's MFN status.

In one new development in 1998, legislation to replace the term "most-favored-nation" in certain U.S. statutes with the term "normal trade relations" (NTR) was enacted into law as Section 5003 of H.R. 2676, the "Internal Revenue Service Restructuring and Reform Act of 1998" (H.Rept. 105-599). The President signed the bill on July 22, 1998 (P.L. 105-206), shortly before the House floor debate on MFN began.⁷⁹ Supporters of MFN status for China clearly hoped that the change would resolve confusion about the annual debate — and, perhaps, make it easier to defend and explain votes in support of the trade status. In the words of a Senate committee report on the technical change,

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

⁷⁷Cited text from a letter dated June 3, 1998, to President Clinton, from Speaker of the House Newt Gingrich, Representative Bill Archer, and Representative Phil Crane.

⁷⁸ Representative Frank Wolf speaking of China's MFN status during House floor debate on H.J.Res. 121. Cited in *The Congressional Record*, July 22, 1998, p. H6091.

⁷⁹ Similar legislation was passed by the Senate in 1996, but not acted upon by the House. The measure was reintroduced on May 15, 1997, as S. 747, and referred to the Senate Committee on Finance, which reported it favorably on September 15, 1997 (S.Rept. 105-82). An almost identical measure (H.R. 2316) was introduced in the House on July 31, 1997, and referred to the House Ways and Means Committee. The language of H.R. 2316 was added in conference to H.R. 2676. For additional information on this change, see CRS Issue Brief 93107, *Most-Favored-Nation (Normal Trade Relations) Policy of the United States*.

States-Israel Free Trade Agreement, and the North American Free Trade Agreement.⁸⁰

One supporter articulated the hopes of MFN supporters this way during the 1998 debate: "We will never again be using that absurd language: Most Favored Nation....now we can get down to serious discussion about what we are really talking about, and that is normal trade relations."⁸¹ In fact, most MFN opponents continued to use the term "MFN" throughout the 1998 House floor debate despite Members' awareness of the technical name change. One opponent referred to the status as "...MFN, or whatever they now want to call this gift to China."⁸²

New Trends and Issues. Despite the expected outcome of the debate on MFN in the 105th Congress, there were several new trends and issues that affected the tone of the legislative debate and which demonstrated the continuing shift in focus away from MFN renewal to other legislative tools. These other trends and issues may continue to influence congressional actions and attitudes on China in the future.

Issues Involving Religious Persecution. One new development in the 105th Congress was the focus on issues involving religious persecution, particularly in China but also worldwide. This focus highlighted important differences in the American religious community, particularly between many mainstream religious groups and conservative religious organizations from the far right of the political spectrum. Many members of religious community groups, such as the National Council of Churches and the National Association of Evangelicals, were supportive of concerns about religious persecution, but worked to moderate pending legislation and in some cases actively opposed pending bills.⁸³ These sentiments were not generally shared by strongly conservative religious groups — in particular, conservative organizations such as the Christian Coalition, the Family Research Council, and American Renewal, Inc. — which for the first time began to devote more effort to the China debate, certainly on questions of religious persecution, but also on a broader range of issues. A letter made available during the MFN debate in 1997, signed by key leaders of these organizations, made clear their differences of opinion with Christian missionary groups in China.⁸⁴

⁸⁰Report language is from Section IIIB of the report to S. 747 (S. Rept. 105-82), a bill introduced by Senator Roth to change the references to "most-favored-nation" status. S. 747 was reported favorably by the Senate Finance Committee on September 15, 1997.

⁸¹Representative Phil Crane during floor debate, cited in *The Congressional Record*, July 22, 1998, p. H6081.

⁸²Representative Pete Stark, in floor debate cited in *The Congressional Record*, July 22, 1998, p. H6080.

⁸³Among the groups opposing or working to mitigate pending legislation on religious persecution were the United Church of Christ; the National Council of Churches; the World Alliance of Reformed Churches; the Billy Graham Evangelistic Association.

⁸⁴Open Letter on China's Persecution of Christians, printed in the *Congressional Record* during House floor debate on MFN renewal, June 24, 1997, pp. H4240-4241. Signators included Gary Bauer (President Family Research Council), Ralph Reed (Executive Director, Christian Coalition), and Rev. Richard John Neuhaus (President, Institute for Religious and
(continued...)

Partially as a result of this involvement, the debate over China's MFN status in 1997 became infused with issues involving morality and values. In this respect, the Clinton Administration was singled out for particular criticism for its policies. Representative Gephardt stated that the MFN debate was about "principle and value and belief."⁸⁵ Representative Wolf criticized Administration policy toward China as a policy that had "fundamentally failed. It is not true to American values...It is amoral, and I personally believe it is immoral."⁸⁶ Representative Rohrabacher described MFN for China as a taxpayer subsidy for elite American corporations, calling this "an abomination."⁸⁷

Deepening Divisions Within Congress. The atmosphere of the 105th Congress House debate on MFN also suggested that long-standing congressional divisions over China policy were deepening, crossing party lines and leading to unusual alliances. In addition to conservative Republicans and religious organizations from the right of the political spectrum, MFN opponents included liberal Democrats, labor interests, and human rights organizations. MFN proponents included party centrists, pro-business conservatives, liberal free traders, and some more moderate religious leaders.⁸⁸ Differences existed particularly between social and economic conservatives in the Republican party, with some senior Republicans stating that "...America's best strategy for promoting lasting democratic change in this repressive society [China] is through the free exchange of goods and services in the context of an open MFN trade relationship,"⁸⁹ and others stating that "...multinational corporations have too much influence in the China debate. There has been an unholy alliance between big business, the Clinton administration and certain Republicans who have adopted the trade-at-any-price approach."⁹⁰

Proliferation of Non-MFN Issues. With the focus on MFN fading, a growing trend has been the proliferation of legislation devoted to other issues in the bilateral

⁸⁴(...continued)

Public Life). The letter referred to the group's deep respect and support for missionaries around the world, but indicated they did not agree with their stand which urged Members "not to vote to revoke China's Most-Favored-Nation (MFN) trade status." (p. H4240) The letter supported the U.S. Catholic Conference for opposing MFN for China. For further information about these groups, see the following websites: Christian Coalition, <http://www.cc.org>, and Family Research Council, <http://www.frc.org>.

⁸⁵Floor debate, *Congressional Record*, June 24, 1997, p. H4273.

⁸⁶Ibid, p. H4271. In other criticisms of White House policy toward China, Representative Solomon termed it "appeasement," and said it was "a policy out of touch with reality." (p. H4244); Representative Hunter referred to a Tickle-Me-Elmo doll as "more coherent than the trade policy of the Clinton Administration." (p. H4250).

⁸⁷Ibid, p. H4247.

⁸⁸The week prior to floor debate, Representative David Dreier included in the *Congressional Record* the text of a letter he had received from Rev. Billy Graham in support of MFN for China. *Congressional Record*, June 20, 1997, p. H 4123.

⁸⁹Text is from June 3, 1998 letter to President Clinton by Representatives Gingrich, Archer, and Crane.

⁹⁰Senator Tim Hutchinson, quoted in *The Congressional Quarterly*, June 6, 1998, p. 1519.

relationship. In a search for effective methods to address the MFN issue while accommodating the broad spectrum of views within the Republican party, Speaker Newt Gingrich appointed senior Republicans Representatives John Edward Porter and David Dreier to lead a House effort to review possible alternatives to MFN withdrawal.⁹¹ The result of that effort, H.R. 2095, was introduced on June 26, 1997. The proposal included increased funding for broadcasts for Radio Free Asia in China and for the National Endowment for Democracy's activities in China, and authorized the State Department to deny visas to Chinese officials involved in religious persecution. But MFN opponents who favored tougher measures against China considered the Porter/Dreier approach too mild; referred to the International Relations Committee, the Permanent Select Committee on Intelligence, and the Judiciary Committee, the bill received no further action.

Instead, congressional attention quickly shifted to a collection of separate bills, each dealing with a specific and fairly narrow issue involving China. The bills were introduced over a period of months and by a range of Members. But they became known informally as the "Cox package," since they were supported and put together by the Chairman of the House Republican Policy Committee, Representative Chris Cox, who had also been a member of the Porter-Dreier task force. The "Cox package" measures either moderately or more seriously sanctioned China for things ranging from proliferation of weapons, to abuses of human rights and religious liberty, to use of prison labor for producing products for export. Many of the pending measures were strongly opposed by the Administration, which was preparing for the first official Sino-U.S. summit of the Clinton presidency, scheduled for October 28-29, 1997.⁹²

The "China package" bills ultimately passed the House by wide margins, and are pending in the Senate as of the date of this report. Members appeared divided over some tactical and substantive considerations. Proponents of the package, for instance, put strong pressure on the House leadership to bring the bills to the floor during the late October summit visit of China's President, Jiang Zemin. But the House did not act on the "China package" until early in November 1997, reportedly because senior House Republican leaders acquiesced to a White House request to keep the bills from the floor during the summit.⁹³ On substantive issues, proponents of a milder approach, including several key House Committees, objected to some of the tougher provisions in the "China package" bills as introduced. As a result, some of the bills were re-introduced in the House without the more stringent provisions, while others had the more sanction-oriented provisions deleted during committee consideration. (For further details on the "China package," see CRS Report 97-933, *Pending Legislation in the 105th Congress*.)

⁹¹According to *The Congressional Quarterly*, the task force met with President Clinton on June 18, 1997.

⁹²The "Cox Package" bills included: H.R. 967, Visas for Religious Officials; H.R. 2195, Prison Labor Imports; H.R. 2232, Radio Free Asia Funding; H.R. 2358, Human Rights Monitors; H.R. 2386, Missile Defense for Taiwan; H.R. 2570, Coercive Abortion; H.R. 2605, International Loan Subsidies; H.R. 2647, Commercial Activities of the PLA; and H.Res. 188, Cruise Missiles to Iran.

⁹³See *The Congressional Quarterly*, October 25, 1997, p. 2620.

Conclusions and Implications for the Future

Over the past nine years, the U.S. policy debate over China's MFN status has undergone several changes. While essentially an irrelevant issue in the 1980s, the question of China's MFN status took on increasing importance beginning in 1990, peaking in 1992 when Congress came closest to revoking or placing further conditions on China's trade status. After this high-water mark, the annual MFN debate for China began to fade markedly in importance. President Clinton's 1993 decision to link China's MFN status to human rights progress appears to have been a pivotal catalyst in this journey of declining importance; confronted with the prospects of White House support, Congress has been more cautious, and has seemed less vigorous in pushing to revoke or condition China's MFN status. Instead, Members have broadened their search for more specific, more targeted legislative alternatives, an approach likely to continue. Having come a long way from his initial position, which seemed prepared to jettison American economic interests and broader strategic goals in favor of long-standing and deeply held American values, President Clinton would also appear to be more committed than ever to his policy of engagement and, hence, to protecting China's MFN status.

A second trend evident since 1989 has been the increasing complexity of any potential legislative agenda concerning China and the blurring of traditional party line alliances. The 1990s have seen the shifting and regrouping of unusual congressional coalitions on the specific question of China's MFN status as well as on the broader issue of U.S. China policy. On these issues, conservatives have aligned with liberals, Republicans with Democrats, industrial proponents with agricultural proponents, so that it is difficult to make generalizations about opponents and supporters. A further complication to the legislative agenda involves the attitudes of key congressional committees. Those that are most crucial for the punitive measures available to U.S. policymakers — such as the House Banking Committee, the House Ways and Means Committee, and the Senate Finance Committee — have majorities who favor insulating U.S. trade and economic policy decisions from other U.S. policy goals. In the past, these committees have been able to stop more punitive measures on China from reaching floor consideration.

If current trends continue, it is likely to mean that the era has passed when China's MFN trade status is in serious jeopardy because of bilateral problems in U.S.-China relations. To the extent that MFN is perceived more and more to be "normal trade relations" rather than a special preferential tariff status, the stakes of terminating or further conditioning China's trade status will be higher. In the future, MFN supporters, backed by broad constituent interests in support of continuing normal trade relations with China, may begin pushing for overhaul of current Jackson-Vanik restrictions in the Trade Act of 1974. They are also likely to begin to support more vigorously permanent MFN status for China, perhaps as a condition of entry into the World Trade Organization (WTO).

But the fading role for the MFN debate in U.S. policy does not necessarily mean that U.S.-China relations will improve or become less controversial over the near term. Long-standing issues involving non-proliferation, human rights, and trade are not likely to diminish. Members who have supported a more assertive U.S. stance against China are likely to continue to explore other avenues and legislative vehicles

for registering their views and maintaining pressure on the White House. Absent demonstrable changes in China's policies, congressional actions targeting China are likely to continue into the foreseeable future