

CRS Report for Congress

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Voting on NTR for China Again in 2001, and Past Congressional Decisions

Kerry Dumbaugh
Specialist in Asian Affairs
Foreign Affairs, Defense, and Trade Division

Summary

Since 1990, Congress has faced an annual, contentious decision on whether, and under what conditions, to renew normal trade relations (NTR) status with China for another year. This annual exercise occurred because under U.S. law, China's NTR status is temporary, and the President has to recommend its renewal each year by June 3. In 2000, the 106th Congress considered and passed H.R. 4444 (P.L. 106-286), which would eliminate the annual NTR renewal process and grant permanent NTR to China. But this Act only grants permanent NTR to China once it joins the World Trade Organization.

Since this has not yet happened, President Bush on June 1, 2001, was compelled to recommend another temporary extension of China's NTR status for one year in order for it to continue uninterrupted. The NTR renewal is subject to enactment of a joint resolution of disapproval by Congress. Such a joint resolution, H.J.Res. 50, was introduced on June 5, 2001, by Representative Dana Rohrabacher. The Ways and Means Trade Subcommittee reported the resolution adversely on July 12, 2001, and the House rejected the resolution on July 18, 2001, by a vote of 259-169.

Background: Congressional Actions, 1989-2000

Since 1989, the U.S. policy debate over China's most-favored-nation (MFN) status (renamed "normal trade relations," or NTR, under U.S. law in 1998) 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 status eligibility. But by 1990, Congress and the Bush Administration were clashing repeatedly over the direction of post-Tiananmen China policy. Administration officials often blamed Congress for being "obstructionist" and "partisan," while 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.

The MFN debate reached a zenith in the 102nd Congress, with the House passing joint resolutions disapproving MFN for China in both 1991 and 1992. (The Senate has never

passed a relevant joint resolution of disapproval.) The primary focus of the debate during these years, however, was not whether to deny MFN status for China altogether, but whether to place new human rights conditions on China's MFN eligibility. In both sessions, the House and Senate jointly passed legislation that would have done the latter. Both times, 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 either instance.

In 1993, newly elected President Bill Clinton announced he would link China's MFN status to human rights progress beginning in 1994. Although the President reversed himself in 1994, his 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. Since 1993, neither the House nor the Senate has passed legislation to deny or further restrict China's MFN trade status. Instead, Members have turned to legislative alternatives, most of which have focused on more specific directions for U.S. policy and more targeted sanctions on China's activities.¹ These alternatives have included legislation concerning prison conditions in China and prison labor exports; coercive abortion practices; religious freedom; China's missile proliferation activities; Radio Free Asia broadcasting; China's participation in multilateral institutions; allegations of Chinese espionage against the United States; and the activities of China's military and intelligence services. The 105th Congress was particularly active, considering a package of legislation in those areas.²

House versus Senate Actions. Throughout the past decade, the House was the more active body in considering legislation affecting China's MFN/NTR status. The House voted on joint resolutions disapproving China's MFN/NTR status ten times in the last ten years – every year since 1990 – and three times voted in favor of disapproving China's MFN status (in 1990, 1991, and 1992). The House also was the more active body on “alternative” measures relating in some way to China's trade status, voting in favor of six such measures (as opposed to two for the Senate) over the past decade. The Senate, on the other hand, has never taken a recorded vote on a joint resolution of disapproval for China's MFN/NTR status. In fact, the Senate considered joint resolutions of disapproval only once in the past ten years: on July 18, 1991, by unanimous consent, the Senate elected to postpone consideration of both the House and Senate joint resolutions on that subject. But the Senate is on record twice with what may be seen as symbolic “test votes” of Senate sentiment on China's MFN/NTR status: in a recorded vote in 1997, the Senate rejected a non-binding amendment to a Foreign Operations Appropriations bill which stated that China's MFN status should be revoked; and in a recorded vote in 1999, the Senate rejected a motion to discharge the Senate Finance Committee from consideration of a joint resolution of disapproval. (See the table that follows.)

¹ In the 104th Congress, the House passed H.R. 2058, the “China Policy Act of 1995,” and H.Res. 461, legislation concerning congressional hearings on China. Neither restricted China's trade status.

² See CRS Report RL30350, *China and the 105th Congress: Policy Issues and Legislation, 1997-1998*. On July 22, 1998, the 105th Congress also passed legislation (P.L. 105-206) which replaced the term “most-favored-nation” in certain U.S. statutes with the term “normal trade relations,” or NTR. This is now how this trade status is referred to in the United States, although the rest of the international community still refers to this status as MFN.

Table 1. Congressional Consideration of MFN for China: 1989-1999

Year	Disapproval Res.	Final Status	Alternate 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) Senate Postponed 7/18, Unanimous Consent	H.R. 2212	Passed House 7/10 (313-112)
	S.J.Res. 153	Senate Postponed 7/18, Unanimous Consent	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) Senate amended with text of S. 2808, passed by voice vote, 9/14 House passed Senate version 9/22, voice vote
			S. 2808	H.R. 5318 vetoed by President, 9/28 House override vote 9/30 (345-74) Senate override vote 10/1 (59-40) - veto sustained
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)
	S.J.Res. 37	—		
1996	H.J.Res. 182	House rejected 6/27 (141-286)	H.Res. 461	Passed House 6/27 (411-7)
	S.J.Res. 56	—		
1997	H.J.Res. 79	House rejected 6/24 (173-259)	—	—
	S.J.Res. 31 S.Amdt. 890*	— Senate rejected 7/16 (22-77)		
1998	H.J.Res. 121	House rejected 7/22 (166-264)	—	—
1999	H.J.Res. 57	House rejected 7/27 (170-260)	—	—
	S.J.Res. 27	Senate rejected motion to discharge committee 7/20 (12-87)	—	—
2000	H.J.Res. 103	House rejected 7/18 (147-281)	H.R. 4444	House passed 5/24 (237-197)
	—	—	S. 2277	Senate passed H.R. 4444 on 9/19 (85-13)
				Signed by President on October 10, 2000, as P.L. 106-286, giving China Permanent NTR upon accession to WTO

China and PNTR: Congressional Action

Several proposals were considered by the 106th Congress pertinent to China's future trade status. On March 8, 2000, President Clinton submitted to Congress a proposal to terminate the application of Title IV of the Trade Act of 1974 to China upon China's accession to the World Trade Organization (WTO). In effect, the proposal granted permanent NTR status to China rather than subjecting that status to annual renewal, giving China the same trade status the United States gives to all but a handful of other countries, without any annual review process or restrictions applying. Subsequently, the chairmen of the relevant House and Senate committees – Representative Bill Archer of the House Ways and Means Committee, and Senator William Roth of the Senate Finance Committee – introduced legislation encompassing the President's request (H.R. 4444 and S. 2277, respectively).

Since current U.S. law continued to apply absent congressional enactment of permanent NTR (PNTR), China's NTR status was scheduled to expire on July 3, 2000. For this reason, President Clinton, on June 2, 2000, had to recommend another temporary extension of China's NTR status for one year. In response to the President's recommendation, Representative Dana Rohrabacher introduced a joint resolution disapproving the one-year extension, H.J.Res. 103. The House rejected it on July 18, 2000, making Senate consideration moot.

House Consideration, H.R. 4444 (Archer). As introduced on May 15, 2000, H.R. 4444 was a simple restatement of the President's March 8, 2000 proposal to extend PNTR to China upon its accession to the WTO. Since then, however, the bill has been substantially expanded and amended to include other provisions. In mark-up on May 17, 2000, the Ways and Means Committee adopted an amendment to the bill to include detailed "import surge" protections, giving the President authority to increase duties on selected Chinese products if their importation increased to such an extent as to threaten market disruption to U.S. producers. This "anti-surge" language was originally part of a comprehensive legislative proposal, crafted by Representatives Doug Bereuter and Sander Levin, that was designed to enhance the PNTR bill's prospects. The Bereuter/Levin proposal (so-called "parallel legislation") was first announced on May 9, 2000 and further refined in subsequent days to address continuing concerns of House leaders. In its final version, Bereuter/Levin proposed establishing a more comprehensive China/PNTR framework for China's WTO accession that would address human rights and other issues of concern to U.S. policymakers. In mark-up, the House Ways and Means Committee adopted an amendment to H.R. 4444 containing only the anti-surge language of the Bereuter/Levin proposal. The Committee then reported the amended H.R. 4444 favorably by the substantial margin of 34-4 (H.Rept. 106-632).³

On May 23, 2000, the full House amended H.R. 4444 further by adding the rest of the Bereuter/Levin language. That change was made possible under a special procedure by the House Rules Committee, in which adoption of the rule (H.Res. 510) automatically

³ "...the Committee is concerned that rejecting the president's recommendation to graduate China from the Jackson-Vanik amendment...would undermine U.S. leverage to bring about change in China, while at the same time sacrificing the interests of U.S. exporters, workers, and consumers." House Ways and Means Committee Report to H.R. 4444, H.Rept. 106-632.

amended H.R. 4444 with the language of the Bereuter/Levin proposal. (The full House adopted the rule by a vote of 294-136.) As further amended by the House, then, H.R. 4444 establishes a Congressional-Executive Commission on China to monitor human rights, labor standards, religious freedom, and rule-of-law progress in China; requires continual review of and reporting on China's compliance with its WTO obligations; establishes a task force on prohibiting prison labor imports; urges that Taiwan's accession to WTO be considered immediately after China's; and authorizes \$99 million in FY2001 for additional news broadcasts into China. The House passed the amended H.R. 4444 on May 24, 2000, by a vote of 237-197.

Senate Consideration, H.R. 4444/S. 2277 (Roth). As with the House bill, the Senate PNTR bill introduced on March 23, 2000 (S. 2277) was identical to the President's March 8, 2000 proposal to extend PNTR to China upon WTO accession. The Senate Finance Committee marked up the Senate bill on May 17, 2000 – the same day the House Ways and Means Committee considered its version – and favorably reported a clean bill by a vote of 19-1 (S.Rept. 106-305). No amendments were considered. In the weeks following that, however, Senate consideration became more problematic. First, with time running short in the 106th Congress, Senate leaders elected to focus on the House-passed bill, H.R. 4444, since Senate passage of the House bill (without amendment) would avoid the delay and further controversy of a conference committee. After invoking cloture on July 27, 2000 (by a vote of 86-12), the Senate resumed consideration of H.R. 4444 when it reconvened after the August recess. On September 7, the Senate voted (92-5) to proceed to consideration of the bill.

Although the Administration and the bill's proponents had advocated straightforward passage of a clean H.R. 4444, a number of Senators sponsored amendments to the bill on a range of human rights and other issues. On September 7, 2000, the Senate rejected 3 such amendments: a Hollings amendment relating to the terms of China's WTO accession (rejected 13-81); a Byrd amendment regarding export of clean energy technology to China (rejected 31-65); and a Wellstone amendment on religious freedom in China (rejected 28-69). The Senate also rejected all additional amendments.

The bill's supporters were most concerned about possible consideration of S. 2645, the "China Non-Proliferation Act," introduced on May 25, 2000 by Senators Fred Thompson and Robert Torricelli.⁴ As introduced, the Thompson/Torricelli bill would have established annual presidential review of China's nuclear non-proliferation record, and would have required the President to take action – including suspension of U.S. exports to suspect Chinese companies – should he determine that nuclear-related transfers have occurred. Administration officials negotiated with the bill's sponsors in an effort to make changes in the legislation (in part by expanding the countries covered under the bill), and the bill's sponsors accommodated many of these concerns. On September 13, 2000, however, the Senate voted 65-32 to table a Thompson amendment to H.R. 4444 relating to non-proliferation. This cleared the way for final passage of H.R. 4444 on September 19, 2000, by a vote of 83-15. The President signed the bill into law the same day it was presented to him, on October 10, 2000 (P.L. 106-286).

⁴ A similar bill, H.R. 4829, was introduced July 13, 2000, by Representative Ben Gilman.

Action in the 107th Congress

In the aftermath of the collision on April 1, 2001, of a Chinese jet fighter with a U.S. navy surveillance plane over the South China Sea, the 107th Congress introduced legislation relating to China's NTR status. H.R. 1467, introduced on April 4, 2001, by Representative Duncan Hunter, would change U.S. law to prohibit the extension of normal trade relations to China at any time in the future. H.R. 1497, also introduced on April 4, 2001, by Representative John Murtha, would revoke the PNTR language enacted last year in P.L. 106-286, leaving current law on annual extensions in place. On June 1, 2001, President Bush was compelled to recommend renewal of China's NTR status again this year because the PRC has not yet joined the WTO. In response to that presidential action, on June 5, 2001, Representative Dana Rohrabacher introduced H.J.Res. 50, a joint resolution disapproving the President's recommendation. The House Ways and Means Committee reported the measure adversely on July 12, 2001 (H.Rept. 107-145), and the full House rejected the measure on July 18, 2001, by a vote of 269-159.

Implications

Proponents of PNTR for the PRC claimed that the measure was necessary to help rationalize the bilateral trade relationship and insulate it to a degree from other contentious, non trade-related issues. The removal of the annual trade certification would also bring U.S. trade laws into conformity with WTO agreements; if U.S. trade treatment of China remained subject to the annual certification, the United States likely would have to invoke the WTO's non-application clause (Article XIII) to avoid being found in violation of WTO rules. In that case, WTO agreements technically would not apply between the two countries. Finally, China's actual admission to the WTO is not dependent on its trade treatment by the United States.

Opponents of granting PNTR to China argued that the measure removed an important source of U.S. leverage with China (and an important source of congressional leverage with the White House) at a time when China seemed to have increased its human rights abuses, its aggressiveness toward Taiwan, and its hostility to the United States. China should not be rewarded for such activities by having this important U.S. leverage removed. These same arguments have been used in support of the NTR/PNTR-related legislation introduced in the 107th Congress.

In a larger sense, the eventual elimination of the annual NTR renewal for China is not likely to mean that controversies in U.S.-China relations or disagreements among U.S. policymakers will vanish. On the contrary, controversies and policy battles have increased on other issues even while the debate over China's trade status over the past decade has faded in importance. This suggests that those who are suspicious of Beijing's intentions or who argue for a more cautious U.S. approach toward the PRC are likely to continue efforts to move Congress and the Administration to more specific, more targeted legislative measures as policy tools. Those who opposed unconditional PNTR for China will undoubtedly continue to place high priority on policy measures that would assure Taiwan's security, protest religious persecution, improve labor rights, help Tibet, and enforce PRC compliance with trade agreements. This being the case, the U.S. policy agenda on China is likely to remain fractionalized and complex, more likely to be characterized by a series of separate and unrelated policy measures rather than an overarching, cohesive policy framework.