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No aspect of international trade between the United States and the Soviet Union has received more attention in recent years than the question of most-favored-nation treatment of Soviet imports to the United States. Most-favored-nation (MFN) treatment of imports means that goods imported from a country enjoying such treatment cannot be subjected to customs duties or other charges in connection with importation, or rules and formalities, less favorable than those which are imposed upon imported goods originating in any other country. It is a rule, whether established by domestic law or by international agreement or both, against discriminatory treatment of imports based upon their place of origin.

Since 1951, Soviet imports to the United States have not enjoyed most-favored-nation treatment;[1] they are subjected to the duties specified in the Smoot-Hawley Tariff Act of 1930, not to those duties as they have been reduced in trade agreements concluded since the 1934 Trade Agreements Act.[2] In 1972, in conjunction with the conclusion of a Lend-Lease Settlement Agreement, the executive authorities of the United States and the Soviet Union negotiated a Trade Agreement which provides for most-favored-nation treatment of Soviet imports with respect to customs duties, their internal taxation or distribution in the United States, any charges upon transfers of payments for their importation, and any rules or formalities in connection with their importation.[3] The Trade Agreement also provides, however, that it will not enter into force until written notices of acceptance are exchanged,[4] and this cannot take place until the U.S. Congress changes domestic law to conform to the agreement. Payments to the United States of installments on the lend-lease obligation are deferred, following the initial payments, until the Trade Agreement enters into force.[5] As of this writing MFN treatment is

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1. Trade Agreements Extension Act of 1951, § 5, 65 Stat. 73; 19 U.S.C. § 1362 (1952).

2. *Id.*

3. Agreement between the United States and the Union of Soviet Socialist Republics Regarding Trade, Oct. 18, 1972, art. 1, para. 1, 67 DEP'T STATE BULL. 595, 596 (1972).

4. *Id.*, art. 9, para. 1.

5. Agreement between the United States and the Union of Soviet Socialist Republics Regarding Settlement of Lend-Lease, Reciprocal Aid and Claims *done* Oct. 18, 1972, art. 4(b)(1)(i), 23 U.S.T. 2910, T.I.A.S. No 7878 (1972).

still not accorded to Soviet imports.

This paper outlines the origins and status of the present discriminatory legal regime,[5] and the likely economic consequences of adoption of an MFN system. Also touched upon are some of the problems which appear to beset efforts to effectuate such a change.

I. THE LEGAL REGIME

MFN treatment was accorded to Soviet imports to the United States between 1937 and 1951.[6] Under the Trade Agreements Act of 1934, as amended and extended until 1951, any duty or other import restriction or duty-free treatment proclaimed in carrying out any trade agreement under the Trade Agreements program was required as a matter of law to be applied to products of "all foreign countries, whether imported directly or indirectly."[7] This meant that tariff reductions negotiated with other countries were applied in like situations to imports from the U.S.S.R. While MFN treatment could be suspended whenever a country discriminated against American goods, such suspensions occurred infrequently, and not with respect to U.S.S.R. imports.[8]

The Trade Agreements Extension Act of 1951, which was considered and enacted during the active hostilities of the Korean War, required the President to withdraw the application of MFN treatment from products of the U.S.S.R. and certain other countries under its "domination or control." The Administration had not proposed this amendment of the 1934 Act. It was first proposed by the minority of the Ways and Means Committee of the United States House of Representatives during the Committee's consideration of the extension bill, but only in respect of future tariff restrictions; it was rejected by the majority of the Committee, and then voted into the bill by the full House. When the bill reached the Senate Finance Committee, Secretary of State Acheson testified against it.[9] The "effects of this amendment would be virtually nil," he pointed out, for it "would have little effect upon the salability of dutiable Soviet products," and "would not affect the salability of their duty-free products at all."[10] The Senate nonetheless rejected his position and even extended the House prohibition to all trade concessions, past or future; the resulting Act reflected the Senate position. At the same time the

6. MFN treatment was extended to the Soviet Union by Executive Agreement on Aug. 4, 1937, 50 Stat. 619; E.A.S. No. 105. It was last extended in 1942, 56 Stat. 1500; E.A.S. No. 253.

7. Trade Agreements Act of 1934, § 350(a)(2), 48 Stat. 944.

8. *See* T.D. 47600, 68 Treas. Dec. 470 (1935) (Germany); T.D. 48947, 71 Treas. Dec. 707 (1937) (Australia).

9. *Hearings on H.R. 1612 before the Senate Comm. on Finance,* 82d Cong., 1st Sess., 3-10 (1951).

10. *Id.* at 8.

Senate adopted an amendment prohibiting imports of Soviet mink, sable, and other fur skins, again over Administration opposition. This too found its way into the Act.

There is no doubt that the reason for the 1951 Congressional action denying MFN treatment to Soviet imports was "political," as Secretary Kissinger characterized it in testimony to the Senate Finance Committee in March 1974.[11] Congress was taking an opportunity at hand, the consideration of a trade bill, to indicate its strong disapproval of Soviet support for North Korea, then in combat with American armed forces, despite its awareness of the extremely limited economic effect of its action. Indeed, this is but one of many examples in the area of controls over East-West trade during the past twenty-five years in which the Congress has taken a position far more restrictive than that of the Administration.[12] In more general terms, they represent a familiar occurrence in American politics. Substantial domestic public opinion concerning an international matter which differs markedly from dominant official opinion relating thereto is reflected by Congressional opposition to administration policy.

The statutory denial of MFN treatment of Soviet imports was reiterated in the 1962 Trade Expansion Act,[13] and thus has continued for the past twenty-three years. Successive administrations have sought for ways to restore it, though with varying degrees of intensity. The Eisenhower Administration indicated, in 1959-60 discussions with the U.S.S.R. concerning a Lend-Lease settlement (one of a number held from time to time without result until 1972), that an atmosphere favorable to such a change could be created if a reasonable settlement could be negotiated. A bill proposed in the mid-1960s by the Johnson Administration which would have authorized restoration of MFN treatment, based on similar conditions, failed to secure sufficient Congressional support to be reported out of committee.

Finally, in 1973, following the 1972 negotiations of a Trade Agreement, a Lend-Lease settlement, and related agreements reflecting "detente" in Soviet-American relations, the Nixon Administration sought similar authority in order to effectuate these agreements. As in 1951, however, political considerations have proved to be a formidable obstacle to the Administration's proposal, in this instance primarily considerations relating to Soviet restrictions upon Jewish

11. *2 Hearings on H.R. 10710 before the Senate Comm. on Finance*, 93d Cong., 2d Sess. 455 (1974).

12. One of the rare contrary examples took place in 1969 when the Administration opposed Senators Muskie and Mondale in their successful effort to loosen controls over U.S. exports to the Soviet Union and certain other countries. The Administration wished to "link" this relaxation to other matters affecting Soviet-American relations.

13. Trade Expansion Act of 1962, § 231, 76 Stat. 876, 19 U.S.C. § 1861.

emigration. While these restrictions are more closely connected with internal affairs than was Soviet support of North Korean hostilities in 1951, they cannot be considered to be wholly internal. They are affected with an international concern, the right to emigrate having been one of the human rights [Article 13(2)] proclaimed by the General Assembly of the United Nations in 1948 as a "common standard of achievement for all peoples and all nations."[14]

On October 3, 1973, the House Ways and Means Committee reported out H.R. 10710, the "Trade Reform Act of 1973," with changes in Title IV (relating to MFN treatment for Soviet imports) which would have imposed added conditions upon the authority of the President to accord MFN status to Soviet imports.[15] Under the bill, MFN treatment cannot be provided to the products of any "nonmarket economy" country that 1) denies its citizens the right or opportunity to emigrate, 2) imposes more than a nominal tax on emigration or on the visas or other documents required for emigration, for any purpose or cause whatsoever, or 3) imposes more than a nominal tax, levy, fine, fee, or other charge on any citizen as a consequence of the desire of such citizen to emigrate to the country of his choice. MFN treatment can be accorded only after the President submits a report to the Congress "indicating that such country is not in violation of" points one, two, or three above.[16]

The House of Representatives acted favorably upon H.R. 10710 on December 11, 1973, following two days of debate. However, before doing so it adopted by a vote of 319 to 80 an amendment to Title IV—the so-called Vanik Amendment. In addition to the denial of MFN treatment to certain countries restricting emigration, the Vanik Amendment would deny the participation by any such country "in any program of the government of the United States which extends credits or credit guarantees or investment guarantees, directly or indirectly."[17]

In March 1974, when hearings upon the House-passed bill began before the Senate Finance Committee, Secretary of State Kissinger strongly opposed the Vanik Amendment (in the Senate it is also known as the Jackson Amendment), as well as the denial of MFN treatment written into H.R. 10710 by the House Ways and Means Committee.[18] As of the present (April 1974), Senate hearings are in

14. Universal Declaration of Human Rights, G.A. Res. 217A, U.N. Doc. A/810 (1948).

15. 119 CONG. REC. H8601-8603 (1973).

16. *Id.* at H8602.

17. *Id.* at H11027. *See* especially H11052-11064.

18. *2 Hearings on H.R. 10710 before the Senate Comm. on Finance*, 93d Cong., 2d Sess. 454 (1974).

progress, and the outcome is in doubt.[19]

II. THE ECONOMIC CONSEQUENCES

Various estimates of the possible growth of U.S.-U.S.S.R. trade have been made on the basis of diverse hypotheses. Given the development of economic relations in a setting of political rapprochement, Ray Cline, the former Director of the State Department's Bureau of Intelligence and Research, posited a theoretical calculation of growth of U.S. exports to the U.S.S.R. to be about $2 billion annually, with Soviet imports amounting to $1.7 billion.[20] According to Cline, the achievement of such a volume of trade would "take quite a few years," however, and the "creation of a more systematic division of labor between the two countries."

What role does MFN status play in this kind of projection? A study by the staff of the U.S. Tariff Commission[21] has indicated that while tariff discrimination has "generally constituted less of a handicap to U.S.S.R. trade than is commonly supposed," it nonetheless adversely affected about 10 percent (based on value) of Soviet imports in 1970. The study pointed out, however, that the traditional trade pattern between the U.S.S.R. and the United States and "probably the deliberate actions of U.S. importers and Soviet foreign-trade corporations, lead to a concentration in imports of the items which avoid the full rates." And it further noted that there were a number of Soviet products which might well experience growth in exportation to the United States if MFN status were accorded, i.e.: plywood; manganese ore; ferrovanadium; steel wire rods, plates, sheets, and other shapes; metalworking equipment; hydrofoil boats; electrical-generation equipment; cotton and man-made fibers; and apparel.[22]

Mere granting of MFN treatment would work no magic. Quality goods, "reliable and fast installation and repair service,"[23] and effective merchandising are necessary to lasting trade gains. Nonetheless, it seems clear that continued denial of MFN treatment to Soviet imports will impede the growth of Soviet-American trade. Conversely, MFN status for Soviet imports will assist the growth of U.S.-U.S.S.R. trade in practical and in psychological ways. Denial of credits and guarantees would exacerbate substantially such negative impact upon Soviet-American trade relations.

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19. For background on the Jackson-Vanik amendment, see *supra* Editor's Foreword, note 1.

20. Cline, *Prospects for U.S.-Soviet Economic Relations*, 69 DEP'T STATE BULL. 328, 334 (1973). For a generally more conservative assessment see: N. Y. Times, Nov. 5, 1973, at 61, col. 1.

21. Malish, *United States Eastern European Trade*, in 4 U.S. TARIFF COMMISSION STAFF STUDIES (1972).

22 *Id.* at 44.

23. Cline, *supra* note 20, at 335.

It is, of course, idle to expect that political considerations will fail to affect decisions concerning the economic relations between the United States and the U.S.S.R. What may be hoped is that the future will represent an improvement over the past, to the benefit of the peoples of both countries and of others. Such an improvement can result to the extent that political considerations can be minimized, and the development of trade relationships can proceed on the basis of non-discrimination and comparative advantage in the production and distribution of goods and services.

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