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TERMINATION OF THE APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 WITH RESPECT TO THE PEOPLE'S REPUBLIC OF CHINA

MAY 25, 2000.—Ordered to be printed

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

REPORT

[To accompany S. 2277]

[Including cost estimate of the Congressional Budget Office]

The Committee on Finance, having considered the bill (S. 2277), to terminate the application of Title IV of the Trade Act of 1974 with respect to the People's Republic of China, reports favorably thereon, without amendment, and recommends that the bill do pass.

I. BACKGROUND

NORMAL TRADE RELATIONS POLICY OF THE UNITED STATES

For most of its early history, the United States accorded its trading partners non-discriminatory tariff treatment, referred to under U.S. law as "normal trade relations" (NTR), only on a bilateral basis. The United States most commonly extended NTR through bilateral commercial agreements known as treaties of friendship, commerce, and navigation (FCN). Those FCN treaties would normally contain a clause granting NTR, although generally on a conditional, rather than unconditional, basis.

The passage of the Reciprocal Trade Agreements Act of 1934 (Pub. L. 73–316, ch. 474, 48 Stat. 943) marked a departure from that practice. The 1934 Act authorized the President to enter into trade agreements providing for a reciprocal reduction in tariffs and to give domestic legal effect to such agreements by proclaiming the required changes directly into the U.S. tariff schedule by executive order. The 1934 Act also required, with limited exceptions, that the

President apply any tariff reductions proclaimed under the authority granted by Congress to all U.S. trading partners on a non-discriminatory basis—effectively establishing a general policy of granting NTR to all U.S. trading partners.

Congress renewed the authority granted to the President on a regular basis over the next three decades. President Truman relied on just such a renewed grant of authority as the basis for the United States agreement in 1948 to the General Agreement on Tariffs and Trade (GATT). Subject to a protocol of provisional application, the United States assumed all of the obligations of an original GATT Contracting Party, including the obligation to extend full NTR to all other GATT contracting parties.

With the onset of the Cold War, however, Congress modified this NTR policy. In the next renewal of the President's authority to enter into reciprocal trade agreements following the formation of the GATT, the Trade Agreements Extension Act of 1951 (Pub. L. 82–50, 65 Stat. 360), Congress directed the President to suspend NTR tariff treatment previously accorded to the Soviet Union and all countries under Communist domination or control. Pursuant to that law, President Truman suspended the People's Republic of China's (China) NTR tariff status as of September 1, 1951. China's occupation of Tibet in 1952 obliged President Truman to suspend Tibet's NTR status as well.

The policy established by the 1951 Act remained the basic framework for U.S. trade relations with the Soviet Union, much of Eastern Europe, China, and a number of other Communist-dominated countries until 1974. With the passage of the Trade Act of 1974, Congress largely revised the basis for U.S. trade relations with Communist countries, expressly allowing for the grant of NTR status under certain conditions. Those conditions were incorporated in title IV of the 1974 Act, together with a procedure for the restoration of NTR status to "nonmarket economy" (NME) countries which were not accorded NTR treatment as of the date of enactment of the 1974 Trade Act.

Under title IV of the 1974 Act, the process for restoring NTR status to an NME country required: (1) conclusion of a bilateral trade agreement which contains a reciprocal grant of NTR treatment and additional provisions required by law, and which is approved by the enactment of a joint resolution of Congress; and (2) compliance with the freedom-of-emigration requirements (the so-called "Jackson-Vanik amendment," section 402 of the 1974 Trade Act, 19 U.S.C. 2432). These requirements can be fulfilled either by a presidential determination that the country in question allows the free emigration of its citizens, or, under specified conditions, by a presidential waiver of such full compliance.

As it applies to the People's Republic of China, the procedure was first invoked in 1979. Then, President Carter transmitted to Congress a trade agreement he had reached with China, its proclamation (Pres. Proc. 4697; 44 F.R. 61161), and the Executive order (E.O. 12167; 44 F.R. 61167) waiving the application of the Jackson-Vanik requirements to China (H. Doc. 96–209). The bilateral agreement with China was approved by Congress on January 24, 1980 (H. Con. Res. 204, 96th Congress) and entered into force on February 1, 1980 (together with the reciprocal grant of NTR status,

which it contains in addition to all other provisions required by section 405(b) of the Trade Act of 1974; 19 U.S.C. 2435(b)).

In the succeeding years, China's NTR status would remain contingent on: (1) triennial extensions of the underlying trade agreement; and (2) continued compliance with, or waiver of, the Jackson-Vanik amendment. The bilateral agreement with China, concluded for a 3-year initial term, itself provides for automatic 3-year extensions. The agreement has thus far been renewed six times, most recently by Presidential Determination No. 98–14 of January 30, 1998 (63 F.R. 5857) through January 31, 2001. The President has renewed the Jackson-Vanik waiver for China each year since 1980, most recently on June 3, 1999. Although the House of Representatives passed disapproval resolutions with respect to China's NTR status in 1990, 1991 and 1992, the Senate did not act on those resolutions. After 1992, neither the House nor Senate passed disapproval resolutions.

The President must recommend the renewal of the Jackson-Vanik waiver by June 3 of every year. The effect is to extend the existing waiver for another 12-month period (through July 3 of the following year), subject to annual review by the Congress. The waiver continues in effect unless it is disapproved within 90 days of the enactment of a joint resolution (i.e., passage of a joint disapproval resolution by Congress and signature of the joint resolution by the President).

The Jackson-Vanik amendment prescribes the exact text of the disapproval resolution and provides a specific fast-track procedure for its consideration in Congress. Under the Jackson-Vanik amendment, the resolution must be reported by the committee of jurisdiction within 30 calendar days, after which the committee may be discharged from further action. The resolution may be amended only with respect to the country (or countries) to which it applies. The debate on the resolution is strictly limited in either Chamber to 20 hours, divided equally between those favoring it and those opposing it. The resolution must be approved by August 31. A presidential veto of the resolution must be overridden by the August 31 deadline or within 15 session days after the Congress has received the veto message, whichever is later. If the resolution is enacted, the waiver and NTR treatment cease to be effective on the 61st day after its enactment.

CHINA AND THE WORLD TRADE ORGANIZATION

China was one of the original Contracting Parties to the GATT, but the Nationalist government of the Republic of China withdrew in 1950. Neither the People's Republic of China nor Taiwan were members of the GATT during the intervening years. In 1982, however, the PRC requested and was officially granted observer status to the GATT. The People's Republic applied for accession shortly thereafter and a formal Working Party on China's accession to the GATT was established in 1986.

China made a push for accession immediately prior to the end of the Uruguay Round of multilateral trade negotiations in 1993, in an effort to become one of the founding members of the World Trade Organization. The negotiations foundered because of a number of issues, including China's request that it be treated as a developing country, its attempt to treat the negotiations as a political

rather than a commercial decision, and substantive differences on the level of commitments that China proposed to make with respect to tariffs, services, investment, intellectual property, and other issues.

Although China did not join the WTO as a founding member, negotiations on its entry continued at both the bilateral and multilateral level. On November 15, 1999, the United States and China signed a bilateral market access agreement as an intermediate step toward China's entry into the WTO. China is now engaged in completing bilateral agreements with a few other WTO member countries and multilateral negotiations on the protocol of accession and the Working Party report. China will not become a member of the WTO until it has completed these negotiations, the General Council has approved China's accession by a two-thirds vote and China has completed its domestic ratification procedures and deposited its instrument of ratification.

The Committee held hearings on the negotiations on April 13, 1999 and on the agreement on February 23, March 23, and April 6, 2000.

II. GENERAL DESCRIPTION OF BILL

SECTION 1: TERMINATION OF APPLICATION OF TITLE IV OF THE TRADE ACT OF 1974 TO THE PEOPLE'S REPUBLIC OF CHINA (CHINA)

Present law

The People's Republic of China's (China) trade status is subject to title IV of the Trade Act of 1974, as amended by the Customs and Trade Act of 1990, which governs the extension of NTR to nonmarket economy countries ineligible for such status as of the date of enactment of the Trade Act. Title IV provides that the President may only grant NTR if the country meets the freedom-of-emigration provisions specified in section 402 (or, as explained below, such provisions are waived), and a bilateral commercial agreement remains in force between the United States and that country providing for reciprocal nondiscriminatory treatment and other minimum requirements. The extension of NTR is subject to congressional disapproval. The Trade Act authorizes the President to waive the requirements for full compliance with respect to a particular country if he determines that such a waiver will substantially promote the freedom-of-emigration objectives of title IV, and if he has received assurances that the emigration practices of the country will lead substantially to the achievement of those objectives.

The United States and China completed a bilateral trade agreement in 1979, which was approved by Congress on January 24, 1980, and entered into force on February 1, 1980. The agreement has been renewed six times, most recently by Presidential Determination No. 98–14 of January 30, 1998 (63 F.R. 5857) through January 31, 2001. The President waived the title IV freedom-of-emigration requirements with respect to China on October 23, 1980 and has renewed the waiver annually thereafter. The President issued the most recent waiver on June 3, 1999; this waiver will remain in effect through July 3, 2000.

Explanation of provision

Section 1(a) of this bill authorizes the President to determine that title IV of the Trade Act of 1974 should no longer apply with respect to China, and afterward to proclaim the extension of non-discriminatory treatment (normal trade relations treatment) to the products of China.

Section 1(b) of this bill requires the President, prior to making the determination provided for in subsection 1(a) and pursuant to the provision of section 122 of the Uruguay Round Agreements Act (19 U.S.C. 3532), to submit a report to Congress certifying that the terms and conditions for China's accession to the WTO are at least equivalent to those agreed between the United States and China on November 15, 1999.

Effective date

The effective date is provided for in section 2 of the bill.

Reason for change

On November 15, 1999, the United States and China signed a bilateral agreement as an intermediate step to China's entry into the WTO. Several steps still remain, however, before China can join the WTO: (1) China must conclude the outstanding bilateral negotiations with members of the WTO working party handling China's accession; (2) the WTO working party must complete multilateral negotiations on the protocol of accession (which lists the commitments that China agrees to make to bring its laws into conformity with the WTO rules) and present it (along with the schedules of China's market access concessions) to the WTO General Council (composed of all WTO members) which must approve China's accession by a two-thirds majority; and (3) China must complete its own domestic ratification of its agreement to join and abide by the rules of the WTO.

Once China enters the WTO, the United States will be obligated by Article I of GATT 1994, Article I of the General Agreement on Trade in Services (GATS), and Article 4 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) to extend to China unconditional most-favored-nation (NTR) treatment. If the United States fails to meet these requirements, it will invoke the "non-application" provision of Article XIII of the General Agreement on Tariffs and Trade 1994. As a practical matter, this means that (1) the United States will not be able to use the WTO's dispute settlement mechanisms to resolve disputes and enforce China's WTO commitments; and (2) China will not have to apply to the United States the concessions that it has made in connection with its WTO membership application, including the commitments in the November 1999 U.S.-China bilateral agreement, except to the extent that these commitments are included in separate (non-WTO) bilateral agreements between the United States and China (such as the 1979 Bilateral Trade Agreement).

Currently, the United States' application of title IV of the Trade Act of 1974 conditions NTR treatment on China's freedom-of-emigration practices. As a result, the grant of NTR to China under United States' law is not consistent with the commitment the United States made to provide unconditional NTR treatment to all WTO members. Even if the conditionality on freedom-of-emigration

were removed, it is the view of the Committee that the Jackson-Vanik annual review procedure would still subject China to treatment different from other WTO members and would similarly not be consistent with U.S. obligations once China enters the WTO. Removal of China from title IV would satisfy the WTO requirements of MFN non-discrimination and unconditional NTR treatment.

Section 1(b) requires the President to submit a report to Congress certifying the terms and conditions of China's accession to the WTO as at least equivalent to those contained in the bilateral agreement between the United States and China. This provision is necessary because the provisions of the bilateral agreement are not binding until they have been agreed to unanimously by the Working Party and included in the Working Party Report to the General Council of the WTO or the appended schedules of concessions. This provision will, therefore, ensure that the United States will benefit from terms and conditions at least as favorable as negotiated by the United States in the bilateral market access agreement reached on November 15, 1999.

SECTION 2: EFFECTIVE DATES

Present law

There is no applicable statute in present law.

Explanation of provision

Section 2(a) states that the extension of nondiscriminatory treatment pursuant to section 1(a)(1) shall be effective no earlier than the effective date of China's accession to the WTO.

Section 2(b) states that on and after the effective date under subsection 2(a) of the extension of nondiscriminatory treatment to the products of China, title IV of the Trade Act of 1974 shall cease to apply to that country. The Committee notes the effective date referred to in section 2(b) is the date the President proclaims the extension of nondiscriminatory treatment. The President cannot make such a proclamation until after the determination in section 1(a) is made and the date of China's accession to the WTO, pursuant to section 2(a). The determination in section 1(a) cannot be made until the President has reported to the Congress pursuant to section 1(b).

Effective date

The provision sets forth the effective date.

Reason for change

While the bilateral agreement between the United States and China has been completed, China's protocol of accession and the Working Party report have not. It is the view of the Committee that it is in the interest of the United States to retain the negotiating leverage provided by the potential removal of China from title IV of the Trade Act of 1974 until China has actually acceded to the WTO. As well, the United States is not obligated to provide unconditional NTR to China until it actually accedes to the WTO. Therefore, section 2(a) of the bill specifies that the President cannot proclaim the extension of nondiscriminatory treatment until, at the earliest, the date China has acceded to the WTO.

Section 2(b) specifies that once the President has proclaimed the extension of nondiscriminatory treatment, title IV of the Trade Act of 1974 shall cease to apply to that country from that day forward.

III. CONGRESSIONAL ACTION

On March 8, 2000, President Clinton, in a letter to the Congress, transmitted legislation terminating the application of title IV of the Trade Act of 1974 with respect to the People's Republic of China, and requested its consideration. S. 2277 incorporated the legislation transmitted by the President and was introduced March 23, 2000, by Senators Roth and Moynihan. It was read twice and referred to the Committee on Finance.

IV. VOTE OF THE COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that S. 2277 was, with a quorum present, ordered reported favorably without amendment by a recorded vote on May 17, 2000, as follows:

Yeas (19).—Senators Roth, Grassley, Hatch, Murkowski (by proxy), Nickles, Gramm, Lott, Mack, Thompson, Coverdell, Moynihan, Baucus, Rockefeller, Breaux, Conrad, Graham, Bryan, Kerrey, and Robb.

Nays (1).—Jeffords.

V. BUDGETARY IMPACT

A. COMMITTEE ESTIMATES

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee estimates that there will be no effect on the budget as a result of the bill.

B. BUDGET AUTHORITY AND TAX EXPENDITURES

1. Budget authority

In accordance with section 308(a)(1) of the Budget Act the Committee states that S. 2277 involves no new or increased budget authority.

2. Tax expenditures

In accordance with section 308(a)(2) of the Budget Act, the Committee states that S. 2277 will result in no increased tax expenditures over the period fiscal years 1999–2009.

C. CONSULTATION WITH CONGRESSIONAL BUDGET OFFICE

In accordance with section 403 of the Budget Act, the Committee advises that the Congressional Budget Office has submitted the following statement on the budgetary impact of S. 2277:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 22, 2000.

Hon. WILLIAM V. ROTH, Jr.,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2277, a bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Hester Grippando.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2277—A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the People's Republic of China

Summary: S. 2277 would allow the President to grant permanent Normal Trade Relations (PNTR) status to the People's Republic of China (China). S. 2277 would become effective no earlier than the date of the accession of the People's Republic of China to the World Trade Organization (WTO). CBO concludes that enactment of the bill would likely increase revenues, but CBO has no basis for estimating the revenue impact of granting the President such authority. Since enacting S. 2277 would affect revenues, pay-as-you-go procedures would apply.

S. 2277 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would not affect the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: S. 2277 would remove China from the list of countries under Title IV of the Trade Act of 1974 (the Jackson-Vanik amendment). The Jackson-Vanik amendment sets forth freedom-of-emigration criteria which must be met or waived by the President and a bilateral trade agreement must be in place in order for a non-market economy to be granted normal trade relations (NTR) status. A waiver of the Jackson-Vanik amendment by the President is subject to disapproval by the United States Congress. Removing China from the Jackson-Vanik amendment would allow the President to grant PNTR to China.

CBO estimates that in itself, granting PNTR treatment to China would have no impact on receipts relative to its revenue baseline. The People's Republic of China has received NTR, renewed annually on a basis of the Presidential waiver of the Jackson-Vanik amendment, renewed annually on a basis of the Presidential waiver of the Jackson-Vanik amendment, since February 1, 1980. CBO's revenue baseline assumes that the People's Republic of China will continue to receive NTR status.

Granting China PNTR status could have an effect on receipts by allowing the United States to trade with China under the WTO, if

and when China should enter the WTO. On November 15, 1999, the President negotiated a bilateral trade agreement with China intended to govern the conditions under which the Untied States and China would trade once China enters the WTO. S. 2277 would require that the President certify that the final terms of China's accession into the WTO are equivalent to that agreement. Without legislation enabling the President to grant PNTR to China, the United States would not be able to trade with China under the WTO.

Imports of textile and apparel products from China are currently subject to quotas. If the United States were to trade with China under the WTO, these quotas would be liberalized. Imports of textile and apparel products from China would likely increase. CBO expects that increased imports from China would be partly offset by decreased imports from other countries. The results of these changes would be an increase in collections of tariff revenues. However, because of the complexity of the world market, undetermined issues facing if, how, and when China would join the WTO, and administrative mechanisms that could potentially be employed to alter the China's quota under the WTO, CBO has no basis to determine what the magnitude of such an effect would be.

Intergovernmental and private-sector impact: S. 2277 contains no intergovernmental or private-sector mandates as defined in UMRA and would not affect the budgets of state, local, or tribal governments.

Estimate prepared by: Federal Costs: Hester Grippando.

Estimate approved by: G. Thomas Woodward, Assistant Director for Tax Analysis.

VI. REGULATORY IMPACT AND UNFUNDED MANDATES

A. REGULATORY IMPACT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following statement concerning the regulatory impact of S. 2277:

1. Impact on individuals and businesses

The Committee states that S. 2277 does not alter any of the substantive or procedural requirements of any programs of the United States Government, and would not, as a consequence, involve any new paperwork or regulatory burdens on individuals.

2. Impact on personal privacy and paperwork

S. 2277 will have no impact on personal privacy or paperwork.

B. UNFUNDED MANDATES

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Committee on Finance has reviewed the provisions of S. 2277 as approved by the Committee on May 17, 2000. In accordance with the requirements of Public Law 104–4, the Committee has determined that the bill contains no Federal private sector mandate.

C. TAX COMPLEXITY ANALYSIS

Section 4022(b) of the Internal Revenue Service Reform and Restructuring Act of 1998 (the IRS Reform Act) requires the Joint Committee on Taxation (in consultation with the Internal Revenue Service and the Department of the Treasury) to provide a tax complexity analysis for all legislation reported by the Senate Committee on Finance, the House Committee on Ways and Means, or any committee of conference if the legislation includes a provision that directly or indirectly amends the Internal Revenue Code (the Code) and has widespread applicability to individuals or small businesses.

S. 2277 does not directly or indirectly amend the Code, and therefore a tax complexity analysis is not required.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee finds no changes in existing law caused by the passage of S. 2277.

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