Prospects for Approving a Trade Agreement and Granting Most Favored Nation Status to the People's Republic of China

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by Charles A. Vanik *

AT THE OUTSET, the Case Western Reserve Journal of International Law is to be congratulated for its timely issue on China. Sino-American relations are evolving very rapidly and the need for thoughtful and scholarly discussions of the legal relations between our two countries has never been more relevant.

I believe the United States will conclude a trade agreement with the People's Republic of China (PRC) this year, and that Congress will extend most favored nation (MFN) status to China this year. My Subcommittee on Trade of the Committee on Ways and Means visited China between March 22 and April 2 of 1979 as part of a follow-up to Secretary Blumenthal's earlier trade discussions. This mission by eleven members of the Trade Subcommittee at the invitation of the PRC government enabled us to prepare for consideration a trade agreement and trade legislation to be enacted, possibly during the Summer of 1979.

Having stated my hope that there will be a trade agreement and my belief that the Congress will approve it, I would like to offer a number of caveats and observations.

First, the PRC-Vietnam conflict threw considerable cold water on the initial flush of enthusiasm that accompanied the establishment of diplomatic relations between the United States and the PRC. We are dealing with a country which is capable of sudden and breath-taking reversals of course. Some of the current leaders are elderly; it is unclear how firm their policies are or how long they will be applied. Further military adventures, political flip-flops, or draconian internal repressions could destroy the public's and the Congress' commitment to a trade agreement, even at the last minute.

Second, commercially, the "normalization of political relations" with the PRC created great excitement among American businessmen, "a sort of oil for the lamps of China" romanticism; there was a great rushing around among businessmen similar to the visits to Cuba of a

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year and a half ago. Now, with the news of the cancellation of major contracts with the Japanese and a better understanding of China's finances (the average per capita GNP of the Chinese is less than a dollar a day!), our business and trade expectations should be a little more realistic.

Thus, I suspect that some of the business-agricultural pressures for normalization of relations with the PRC will quickly cool. The rush to trade may become a more thoughtful debate than the rush to political relations.

Third, since it appears that the Chinese are permitting family reunifications, and that there has been a dramatic increase in the level of emigration (2,000 per month compared to 25 to 30 a month a year ago), then the Jackson-Vanik amendment requirements relating to the right to emigrate can be met. We do, however, need more information on this situation. The debate on the Taiwan "Institute" brought out numerous horror stories about human rights conditions in China, particularly in areas such as Tibet. The Amnesty International report of last Autumn helps remind us that we are dealing with an extraordinarily arbitrary society. The writings of Chen Jo-hsi (e.g., *The Execution of Mayor Yin*) also help remind us of the costs of the Cultural Revolution. Nevertheless, unless the current policy of apparent liberalization is just another "let a hundred flowers bloom" phenomena, the Freedom of Emigration requirements of the 1974 Trade Act will probably be resolved.

Fourth, I believe the claims settlement reached by Secretary Blumenthal will be acceptable. I would only note that I find it very unfortunate that special interests succeeded in placing in the Trade Act of 1974 a requirement that our claims settlement with Czechoslovakia must be 100 cents on the dollar—a requirement imposed on no other defeated World War II country and a requirement which has prevented an improvement of relations with that important Eastern European country. I hope that the precedent of settling with the PRC on forty-one cents on the dollar (the same proportion the Czechs agreed to at least six years ago) will enable us to reconsider the legislation which has effectively barred normalization of relations with Czechoslovakia.

Fifth, a complication in any trade "normalization" with the PRC will be their willingness to negotiate a textile and apparel bilateral agreement pursuant to the Multifiber Arrangement (MFA). In the past Congress the Textile Caucus, an informal coalition of members of the House and Senate concerned about problems in the textile and apparel
industry, clearly demonstrated their ability to shape and control trade legislation in the Congress. Whether or not you agree with the economic concepts of the MFA and textile and apparel quotas, the political power of this industry, with its 2.3 million workers, is a fact of life. I raise this point, because one of the principal goals of the textile and apparel industry in the past few years has been to obtain a bilateral quota with the PRC or otherwise bring textile items (which are the PRC's second major foreign exchange earner) under controls. While the level of imports from the PRC has been relatively low (one to two per cent of United States textile imports), the domestic industry lives in fear of the enormous potential of the PRC in this labor intensive area. There is a fear that the PRC could quickly target vast quantities of apparel to the United States market and could price these items at whatever the state decreed so as to obtain foreign exchange. The domestic industry therefore has sought to obtain a quota ceiling on imports from the PRC as early as possible—before they build up a large historic supply base and then insist that that high, historic base should be where quota level negotiations commence. Again, one can argue whether the fear of massive imports from the PRC is justifiable—but one cannot argue about the existence of the fear or of the political power of the domestic industry. Thus, I believe that before a trade agreement can be finalized, there will have to be a clear understanding that the United States has obtained a "satisfactory" textile and apparel bilateral agreement with the PRC. The terms of this bilateral agreement are currently being negotiated, but it is slow going and at the time of this writing, the results have been highly unsatisfactory.

As a corollary, of course, textile and apparel limits imposed on the PRC by both the European Community and the United States will limit the PRC's ability to buy from the West—and further temper business interest in China.

Finally, as the author in the House of Representatives of the Jackson-Vanik amendment, I am deeply concerned about the implications—the possible backlash—which could develop in the Soviet Union.

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1 The ability of the PRC to undersell others, even at non-MFN rates is striking. In a trade publication for the men's wear industry the following example was cited: "Landed cost is certainly one inducement according to Sam Ko of Grace Garments. Even with 37.5% duty on cotton pants (versus 16.5% for Hong Kong origin), Grace's Chinese production has a landed cost of about $6.00 HK ($1.28 U.S.) versus $6.30 HK ($1.34 U.S.) for Hong Kong pants." Daily News Record, Jan. 25, 1979, at 6.
from granting MFN status to the PRC prior to considering MFN for the Soviet Union. This issue is particularly sensitive, because the Soviet Union has been very quietly but very dramatically improving its emigration climate for more than a year. To ignore the change in the Soviet Union while rushing to embrace a little understood PRC emigration policy is simply "undiplomatic." Therefore, it is my hope that we consider MFN for the Soviet Union at the same time or prior to any MFN trade agreement with the PRC.

The problem of extending MFN to the Soviet Union and dealing with the provisions of the Jackson-Vanik amendment has centered around the requirement in section 402(c)(1)(B) of the 1974 Trade Act that the President "has received assurances that the emigration practices of that country will henceforth lead substantially to the achievement of the objectives of this [Freedom of Emigration] section."

It has become clear since the passage of the Trade Act that the Soviet Union will not make any public promise to America relating to immigration policy. However, if the Carter Administration can in some form obtain information indicating that present policies are a trend toward immigration policy improvement, the President may be in a position to advise the Congress that he believes the immigration policy has improved and that he has reason to expect a trend toward a better climate. Under these circumstances, Congress may approve a one year waiver and liberalize trade with the Soviet Union.

It is my opinion that an even-handed approach to both the Soviet Union and China would be in the best interests of America. It is my further belief that the simultaneous submission of both cases would facilitate both actions. It is also my belief that this action would constructively help the congressional consideration of the SALT agreement—in a sense "clear the road" for approval. The task concerning either China or the Soviet Union will not be an easy legislative matter. There is a growing, substantial group of House members, perhaps as many as 150, who philosophically oppose any improved or increased relations with any communist or non-market-economy country.

In the trade decisions involving both the Soviet Union and the People's Republic of China, I hope that the Administration will decide to resolve the issue by utilizing the Trade Act of 1974 rather than by endeavoring to modify the human rights provisions. As far as I am concerned, these provisions are in concrete form as a basic part of our law, applicable to all nations. The moral achievement of the legislation cannot be reversed.
If the Administration decides on human rights modifications, normalized trade relationships will certainly be delayed by two years or more because of congressional deliberation. On the other hand, utilization of the Trade Act procedures could achieve congressional approval this year.

This then, is where I believe the Congress now stands on the issue of trade with China and the Soviet Union. The year 1979 will be one of trade decisions, involving both the just-concluding Tokyo Round multilateral trade negotiations and East-West trade relations.

I am sure that the Journal's work on China will help us in considering some of these momentous questions. Your work in this area is appreciated.