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1<sup>ST</sup> SESSION

# H. R. 1991

To extend to the People's Republic of China renewal of nondiscriminatory (most-favored-nation) treatment provided certain conditions are met.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 5, 1993

Mr. SMITH of New Jersey (for himself, Mr. OBERSTAR, Mr. WOLF, Mr. LAFALCE, Mr. HYDE, and Mr. SOLOMON) introduced the following bill; which was referred jointly to the Committees on Ways and Means, Foreign Affairs, and Rules

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## A BILL

To extend to the People's Republic of China renewal of nondiscriminatory (most-favored-nation) treatment provided certain conditions are met.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "United States-China  
5 Act of 1993".

6 **SEC. 2. FINDINGS AND POLICY.**

7 (a) FINDINGS.—The Congress makes the following  
8 findings:

1           (1) On June 4, 1989, thousands of Chinese citi-  
2           zens courageously demonstrated that they were pre-  
3           pared to risk their lives and futures in pursuit of  
4           democratic freedom and respect for human rights.

5           (2) The People’s Republic of China, as a mem-  
6           ber of the United Nations Security Council, is obli-  
7           gated to respect and uphold the United Nations  
8           Charter and Universal Declaration of Human  
9           Rights.

10          (3) Despite the massive demonstration for self-  
11          determination and fundamental principles of human  
12          rights and despite the People’s Republic of China’s  
13          membership in the United Nations, the Government  
14          of the People’s Republic of China continues to fla-  
15          grantly violate internationally recognized standards  
16          of human rights, and engages in—

17                 (A) torture and cruel, inhuman, or degrad-  
18                 ing treatment or punishment;

19                 (B) arbitrary arrest, unacknowledged de-  
20                 tention without charges and trial, and jailing of  
21                 persons solely for the nonviolent expression of  
22                 their political views; and

23                 (C) use of prison labor to produce cheap  
24                 products for export to countries, including the

1 United States, in violation of international labor  
2 treaties and United States law.

3 (4) The Government of the People's Republic of  
4 China continues to deny Chinese citizens and others,  
5 who have supported the prodemocracy movement,  
6 the right of free emigration despite having pledged  
7 to do so in 1991.

8 (5) The Government of the People's Republic of  
9 China continues to employ a repressive "birth  
10 quota" system, implemented by the use of forced  
11 abortions and involuntary sterilizations.

12 (6) The Government of the People's Republic of  
13 China continues to use military and police forces to  
14 intimidate and repress the Tibetan people seeking  
15 political and religious freedom, and continues to vio-  
16 late the provisions of the Fourth Geneva Convention  
17 by encouraging the resettlement of large numbers of  
18 Chinese in Tibet.

19 (7) The Government of the People's Republic of  
20 China continues to engage in unfair trade practices  
21 against the United States by raising tariffs, employ-  
22 ing taxes as a surcharge on tariffs, using discrimina-  
23 tory customs rates, imposing import quotas and  
24 other quantitative restrictions, barring the importa-  
25 tion of certain items, using licensing and testing re-

1        requirements to limit imports, and falsifying country  
2        of origin documentation to transship textiles and  
3        other items to the United States through Hong  
4        Kong and third countries.

5            (8) Although the Government of the People's  
6        Republic of China has pledged to adhere to the  
7        guidelines and parameters of the Missile Technology  
8        Control Regime, there are continuing reports of Chi-  
9        nese transfers of military technology covered by such  
10       Regime to the Middle East, Africa, and Asia.

11           (9) The Government of the People's Republic of  
12        China continues to unjustly restrict and imprison re-  
13        ligious leaders and members of religious groups who  
14        do not adhere to the dogma and control of state-  
15        sponsored religious organizations.

16           (10) It is the policy and practice of the Govern-  
17        ment of the People's Republic of China's Communist  
18        Party to control all trade unions and suppress and  
19        harass members of the independent labor union  
20        movement.

21           (11) The Government of the People's Republic  
22        of China continues to harass and restrict the activi-  
23        ties of accredited journalists and to restrict broad-  
24        casts by the Voice of America.

25        (b) POLICY.—It is the sense of the Congress that—

1           (1) with respect to the actions of the People's  
2           Republic of China in the areas of human rights,  
3           weapons proliferation, and unfair trade practices,  
4           the President should take such action as is necessary  
5           to achieve the purposes of this Act, including—

6                   (A) urging the Communist Chinese leaders  
7                   to release all political and religious prisoners in  
8                   China and Tibet, and to cease forcing the large-  
9                   scale influx of Chinese settlers into Tibet which  
10                  is threatening the survival of the Tibetan cul-  
11                  ture;

12                  (B) conducting diplomatic negotiations  
13                  with the Government of the People's Republic  
14                  of China to encourage them to allow inter-  
15                  national human rights and humanitarian orga-  
16                  nizations access to prisoners in China and  
17                  Tibet;

18                  (C) directing the United States Trade Rep-  
19                  resentative to take necessary and appropriate  
20                  action pursuant to section 301 of the Trade Act  
21                  of 1974 and the Memorandum of Understand-  
22                  ing between the Governments of the United  
23                  States and People's Republic of China concern-  
24                  ing market access, signed October 10, 1992,  
25                  with respect to the continuing unfair trade

1 practices of the People's Republic of China that  
2 are discriminatory and unreasonably restrict  
3 United States commerce; and

4 (D) encouraging members of the Missile  
5 Technology Control Regime and other countries  
6 to develop a common policy concerning the Peo-  
7 ple's Republic of China's transfer of missile  
8 technology to other countries;

9 (2) sanctions being applied against the People's  
10 Republic of China on the date of the enactment of  
11 this Act should be continued and strictly enforced;  
12 and

13 (3) the President should direct the Secretary of  
14 Commerce to consult with American business lead-  
15 ers, having significant trade with or investments in  
16 the People's Republic of China, to encourage them  
17 to adopt a voluntary code of conduct that—

18 (A) follows internationally recognized  
19 human rights principles;

20 (B) ensures that the employment of Chi-  
21 nese citizens is not discriminatory in terms of  
22 sex, ethnic origin, or political belief;

23 (C) refrains from knowingly using prison  
24 labor;

1 (D) recognizes workers right to organize  
2 and bargain collectively; and

3 (E) discourages mandatory political indoc-  
4 trination on business sites.

5 **SEC. 3. MINIMUM STANDARDS WHICH THE GOVERNMENT**  
6 **OF THE PEOPLE'S REPUBLIC OF CHINA MUST**  
7 **MEET TO CONTINUE TO RECEIVE NON-**  
8 **DISCRIMINATORY MOST-FAVORED-NATION**  
9 **TREATMENT.**

10 Notwithstanding any other provisions of law, the  
11 President may not recommend continuation of a waiver  
12 for the 12-month period beginning July 3, 1994, under  
13 section 402(d) of the Trade Act of 1974 (19 U.S.C.  
14 2432(d)) for the People's Republic of China, unless the  
15 President reports in the document required to be submit-  
16 ted by such section that the government of that country—

17 (1) has taken appropriate actions to begin ad-  
18 hering to the provisions of the Universal Declaration  
19 of Human Rights in China and Tibet;

20 (2) is allowing unrestricted emigration of the  
21 citizens who desire to leave China for reasons of po-  
22 litical or religious persecution to join family mem-  
23 bers abroad, or for other valid reasons;

24 (3) has provided an acceptable accounting for  
25 and release of Chinese citizens detained, accused, or

1 sentenced as a result of the nonviolent expression of  
2 their political beliefs in relation to events which oc-  
3 curred during and after the violent repression of  
4 demonstrations in Tiananmen Square on June 4,  
5 1989, and has provided an acceptable accounting for  
6 and release of other citizens detained, accused, or  
7 sentenced for the nonviolent expression of their po-  
8 litical beliefs or for peacefully exercising their inter-  
9 nationally guaranteed rights of freedom of speech,  
10 association, and assembly;

11 (4) does not support or administer any program  
12 of coercive abortion or involuntary sterilization;

13 (5) has taken effective, verifiable action to pre-  
14 vent export of products to the United States manu-  
15 factured wholly or in part by convict, forced, or in-  
16 dentured labor and has complied with the terms of  
17 the Memorandum of Understanding signed on Au-  
18 gust 7, 1992, by allowing, without limitation or re-  
19 striction, United States Customs officials to visit  
20 places suspected of producing such goods for export;  
21 and

22 (6) has made overall significant progress in—

23 (A) ceasing religious persecution and lift-  
24 ing restrictions on freedom of religious belief in  
25 the People's Republic of China and Tibet and

1           ceasing to threaten the survival of the Tibetan  
2           culture;

3           (B) releasing leaders and members of reli-  
4           gious groups detained, imprisoned, or under  
5           house arrest for expression of their religious be-  
6           liefs;

7           (C) ceasing unfair and discriminatory  
8           trade practices which restrict and unreasonably  
9           burden American business;

10          (D) providing United States exporters fair  
11          access to Chinese markets, including lowering  
12          tariffs, removing nontariff barriers, and increas-  
13          ing the purchase of United States goods and  
14          services;

15          (E) adhering to the guidelines and param-  
16          eters of the Missile Technology Control Regime  
17          and the controls adopted by the Nuclear Suppli-  
18          ers Group and the Australian Group on Chemi-  
19          cal and Biological Arms;

20          (F) adhering to the Joint Declaration on  
21          Hong Kong that was entered into between the  
22          United Kingdom and the People's Republic of  
23          China;

24          (G) cooperating with United States efforts  
25          to obtain an acceptable accounting of United

1 States military personnel who are listed as pris-  
2 oners of war or missing in action as a result of  
3 their service in—

4 (i) the Korean conflict; or

5 (ii) the Vietnam conflict;

6 (H) ceasing the jamming of Voice of Amer-  
7 ica broadcasts; and

8 (I) providing international human rights  
9 and humanitarian groups access to prisoners,  
10 trials, and places of detention.

11 **SEC. 4. REPORT BY THE PRESIDENT.**

12 If the President recommends in 1994 that the waiver  
13 referred to in section 3 be continued for the People's Re-  
14 public of China, the President shall state in the document  
15 required to be submitted to the Congress by section 402(d)  
16 of the Trade Act of 1974, the extent to which the Govern-  
17 ment of the People's Republic of China has complied with  
18 the provisions of section 3, during the period covered by  
19 the document.

20 **SEC. 5. NONDISCRIMINATORY TREATMENT FOR PRODUCTS**  
21 **FROM NONSTATE-OWNED ENTERPRISES.**

22 (a) IN GENERAL.—Notwithstanding any other provi-  
23 sions of law, if nondiscriminatory treatment is not granted  
24 to the People's Republic of China by reason of the occur-

1 rence of an event described in subsection (b), nondiscrim-  
2 inatory treatment shall—

3 (1) continue to apply to any good that is pro-  
4 duced or manufactured by a person that is not a  
5 state-owned enterprise of the People’s Republic of  
6 China, but

7 (2) not apply to any such good that is marketed  
8 or otherwise exported by a state-owned enterprise of  
9 the People’s Republic of China.

10 Nondiscriminatory treatment under this section shall be  
11 in effect for the same period of time the waiver referred  
12 to in section 3 would have been effective had it taken ef-  
13 fect.

14 (b) EVENTS.—An event described in this subsection  
15 means—

16 (1) the President fails to request the waiver re-  
17 ferred to in section 3 and reports to the Congress  
18 that such failure was a result of the President’s in-  
19 ability to report that the People’s Republic of China  
20 has met the standards described in such section; or

21 (2) the President requests the waiver referred  
22 to in section 3, but a disapproval resolution de-  
23 scribed in subsection (c)(1) is enacted into law.

24 (c) DISAPPROVAL RESOLUTION.—

1           (1) IN GENERAL.—For purposes of this section,  
2           the term “resolution” means only a joint resolution  
3           of the two Houses of Congress, the matter after the  
4           resolving clause of which is as follows: “That the  
5           Congress does not approve the extension of the au-  
6           thority contained in section 402(c) of the Trade Act  
7           of 1974 recommended by the President to the Con-  
8           gress on \_\_\_\_\_ with respect to the  
9           People’s Republic of China because the Congress  
10          does not agree that the People’s Republic of China  
11          has met the standards described in section 3 of the  
12          United States-China Act of 1993”, with the blank  
13          space being filled with the appropriate date.

14          (2) APPLICABLE RULES.—The provisions of  
15          sections 153 (other than paragraphs (3) and (4) of  
16          subsection (b) of such section) and 402(d)(2) (as  
17          modified by this subsection) of the Trade Act of  
18          1974 shall apply to a resolution described in para-  
19          graph (1).

20          (d) DETERMINATION OF DUTY STATUS OF ENTER-  
21          PRISES.—

22          (1) IN GENERAL.—Subject to paragraph (2),  
23          the Secretary of the Treasury shall determine which  
24          persons are state-owned enterprises of the People’s

1 Republic of China for purposes of this Act and com-  
2 pile and maintain a list of such persons.

3 (2) DEFINITIONS AND SPECIAL RULES.—For  
4 purposes of making the determination required by  
5 paragraph (1), the following definitions apply:

6 (A)(i) The term “state-owned enterprise of  
7 the People’s Republic of China” means a person  
8 affiliated with or wholly owned, controlled, or  
9 subsidized by the Government of the People’s  
10 Republic of China and whose means of produc-  
11 tion, products, and revenues are owned or con-  
12 trolled by a central or provincial government  
13 authority. A person shall be considered to be  
14 state-owned if—

15 (I) the person’s assets are primarily  
16 owned by a central or provincial govern-  
17 ment authority;

18 (II) a substantial proportion of the  
19 person’s profits are required to be submit-  
20 ted to a central or provincial government  
21 authority;

22 (III) the person’s production, pur-  
23 chases of inputs, and sales of output, in  
24 whole or in part, are subject to state, sec-  
25 toral, or regional plans; or

1 (IV) a license issued by a government  
2 authority classifies the person as state-  
3 owned.

4 (ii) Any person that—

5 (I) is a qualified foreign joint venture  
6 or is licensed by a governmental authority  
7 as a collective, cooperative, or private en-  
8 terprise; or

9 (II) is wholly owned by a foreign per-  
10 son,

11 shall not be considered to be state-owned.

12 (B) The term “qualified foreign joint ven-  
13 ture” means any person—

14 (i) which is registered and licensed in  
15 the agency or department of the Govern-  
16 ment of the People’s Republic of China  
17 concerned with foreign economic relations  
18 and trade as an equity, cooperative, con-  
19 tractual joint venture, or joint stock com-  
20 pany with foreign investment;

21 (ii) in which the foreign investor part-  
22 ner and a person of the People’s Republic  
23 of China share profits and losses and joint-  
24 ly manage the venture;

1 (iii) in which the foreign investor  
2 partner holds or controls at least 25 per-  
3 cent of the investment and the foreign in-  
4 vestor partner is not substantially owned  
5 or controlled by a state-owned enterprise of  
6 the People's Republic of China;

7 (iv) in which the foreign investor part-  
8 ner is not a person of a country the gov-  
9 ernment of which the Secretary of State  
10 has determined under section 6(j) of the  
11 Export Administration Act of 1979 to have  
12 repeatedly provided support for acts of  
13 international terrorism; and

14 (v) which does not use state-owned  
15 enterprises of the People's Republic of  
16 China to export its good or services.

17 (C) The term "person" means a natural  
18 person, corporation, partnership, enterprise, in-  
19 strumentality, agency, or other entity.

20 (D) The term "foreign investor partner"  
21 means—

22 (i) a natural person who is not a citi-  
23 zen of the People's Republic of China; and

24 (ii) a corporation, partnership, instru-  
25 mentality, enterprise, agency, or other en-

1           tity that is organized under the laws of a  
2           country other than the People's Republic  
3           of China and 50 percent or more of the  
4           outstanding capital stock or beneficial in-  
5           terest of such entity is owned (directly or  
6           indirectly) by natural persons who are not  
7           citizens of the People's Republic of China.

8           (e) PETITION FOR CHANGE IN DUTY STATUS.—Any  
9           person who believes that a person should be included on  
10          or excluded from the list compiled by the Secretary under  
11          subsection (d)(1) may request that the Secretary review  
12          the status of such person.

13       **SEC. 6. EFFECT OF GATT ENTRY ON MFN STATUS.**

14          Notwithstanding the entry of the People's Republic  
15          of China into the General Agreement on Tariffs and  
16          Trade, most-favored-nation treatment shall not be auto-  
17          matically conferred on the products of the People's Repub-  
18          lic of China unless the People's Republic of China satisfies  
19          the standards described in section 3 and complies with sec-  
20          tion 402 of the Trade Act of 1974 (19 U.S.C. 2432).

21       **SEC. 7. SANCTIONS BY OTHER COUNTRIES.**

22          If the President decides not to seek a continuation  
23          of a waiver in 1994 under section 402(d) of the Trade  
24          Act of 1974 for the People's Republic of China, the Presi-  
25          dent shall, during the 30-day period beginning on the date

1 that the President would have recommended to the Con-  
2 gress that such a waiver be continued, undertake efforts  
3 to ensure that members of the General Agreement on Tar-  
4 iffs and Trade take similar action with respect to the Peo-  
5 ple’s Republic of China.

6 **SEC. 8. DEFINITIONS.**

7 For purposes of this Act:

8 (1) **DETAINED AND IMPRISONED.**—The terms  
9 “detained” and “imprisoned” include, but are not  
10 limited to, incarceration in prisons, jails, labor re-  
11 form camps, labor reeducation camps, and local po-  
12 lice detention centers.

13 (2) **ACCEPTABLE ACCOUNTING.**—The term “ac-  
14 ceptable accounting” includes—

15 (A) providing information regarding the lo-  
16 cation of any person being held,

17 (B) the legal status of such person,

18 (C) if convicted, the sentence of such per-  
19 son, and

20 (D) if released, when and with what re-  
21 strictions.

22 (3) **CONVICT, FORCED, OR INDENTURED**  
23 **LABOR.**—The term “convict, forced, or indentured  
24 labor” has the meaning given such term by section  
25 307 of the Tariff Act of 1930 (19 U.S.C. 1307).

1           (4) VIOLATIONS OF INTERNATIONALLY RECOG-  
2           NIZED STANDARDS OF HUMAN RIGHTS.—The term  
3           “violations of internationally recognized standards of  
4           human rights” includes, but is not limited to, tor-  
5           ture, cruel, inhuman, or degrading treatment or  
6           punishment, prolonged detention without charges  
7           and trial, causing the disappearance of persons by  
8           the abduction and clandestine detention of those per-  
9           sons, secret judicial proceedings, and other flagrant  
10          denial of the right to life, liberty, or the security of  
11          any person.

12          (5) MISSILE TECHNOLOGY CONTROL REGIME.—  
13          The term “Missile Technology Control Regime”  
14          means the agreement, as amended, between the  
15          United States, the United Kingdom, the Federal Re-  
16          public of Germany, France, Italy, Canada, and  
17          Japan, announced on April 16, 1987, to restrict sen-  
18          sitive missile-relevant transfers based on an annex of  
19          missile equipment and technology.

20          (6) SIGNIFICANT PROGRESS.—(A) The term  
21          “significant progress” in section 3, means the imple-  
22          mentation of measures that will meaningfully reduce,  
23          or lead to the end of, the practices identified in such  
24          section.

1           (B) With regard to section 3(5)(E), progress  
2           may not be determined to be “significant progress”  
3           if, after the date of the enactment of this Act, the  
4           President determines that the People’s Republic of  
5           China has transferred—

6                   (i) ballistic missiles or missile launchers for  
7                   the M-9 or M-11 weapons systems to Syria,  
8                   Pakistan, or Iran; or

9                   (ii) material, equipment, or technology that  
10                  would contribute significantly to the manufac-  
11                  ture of a nuclear explosive device to another  
12                  country and that the material, equipment, or  
13                  technology is to be used by such country in the  
14                  manufacture of such device.

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HR 1991 IH—2