

103D CONGRESS
1ST SESSION

S. 806

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

IN THE SENATE OF THE UNITED STATES

APRIL 22 (legislative day, APRIL 19), 1993

Mr. MITCHELL (for himself, Mr. KENNEDY, Mr. MOYNIHAN, Mr. FORD, Mr. DECONCINI, Mr. GRAHAM, Mr. DODD, Mr. BIDEN, Mr. WELLSTONE, Mrs. BOXER, Mrs. FEINSTEIN, Mr. HELMS, Ms. MIKULSKI, Mr. LEVIN, Mr. LEAHY, Mr. SASSER, and Mr. SARBANES) introduced the following bill; which was read twice and referred to the Committee on Finance

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 use military and police forces to
10 intimidate and repress the Tibetan people seeking
11 political and religious freedom, and continues to vio-
12 late the provisions of the Fourth Geneva Convention
13 by encouraging the resettlement of large numbers of
14 Chinese in occupied Tibet.

15 (6) The Government of the People's Republic of
16 China continues to engage in unfair trade practices
17 against the United States by raising tariffs, employ-
18 ing taxes as a surcharge on tariffs, using discrimina-
19 tory customs rates, imposing import quotas and
20 other quantitative restrictions, barring the importa-
21 tion of certain items, using licensing and testing re-
22 quirements to limit imports, and falsifying country
23 of origin documentation to transship textiles and
24 other items to the United States through Hong
25 Kong and third countries.

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

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

12 (9) It is the policy and practice of the Govern-
13 ment of the People's Republic of China's Communist
14 Party to control all trade unions and suppress and
15 harass members of the independent labor union
16 movement.

17 (10) The Government of the People's Republic
18 of China continues to harass and restrict the activi-
19 ties of accredited journalists and to restrict broad-
20 casts by the Voice of America.

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

22 (1) with respect to the actions of the People's
23 Republic of China in the areas of human rights,
24 weapons proliferation, and unfair trade practices,

1 the President should take such action as is necessary
2 to achieve the purposes of this Act, including—

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

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

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

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

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

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

15 (A) follows internationally recognized
16 human rights principles;

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

20 (C) refrains from knowingly using prison
21 labor;

22 (D) recognizes workers right to organize
23 and bargain collectively; and

24 (E) discourages mandatory political indoc-
25 trination on business sites.

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

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

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

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

20 (3) has provided an acceptable accounting and
21 release of—

22 (A) Chinese citizens detained, accused, or
23 sentenced as a result of the nonviolent expres-
24 sion of their political beliefs in relation to
25 events which occurred during and after the vio-

1 lent repression of demonstrations in Tiananmen
2 Square on June 4, 1989; and

3 (B) other citizens detained, accused, or
4 sentenced for the nonviolent expression of their
5 political beliefs or for peacefully exercising their
6 internationally guaranteed rights of freedom of
7 speech, association, and assembly;

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

17 (5) has made overall significant progress in—

18 (A) ceasing religious persecution and lift-
19 ing restrictions on freedom of religious belief in
20 the People's Republic of China and Tibet;

21 (B) releasing leaders and members of reli-
22 gious groups detained, imprisoned, or under
23 house arrest for expression of their religious be-
24 liefs;

1 (C) ceasing financial and other incentives
2 to encourage non-Tibetans to relocate in Tibet,
3 including development and other projects which
4 bring in substantial numbers of non-Tibetan
5 workers;

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

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

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

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

23 (H) cooperating with United States efforts
24 to obtain an acceptable accounting of United
25 States military personnel who are listed as pris-

1 oners of war or missing in action as a result of
2 their service in—

3 (i) the Korean conflict; or

4 (ii) the Vietnam conflict;

5 (I) ceasing the jamming of Voice of Amer-
6 ica broadcasts; and

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

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

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

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

21 (a) IN GENERAL.—Notwithstanding any other provi-
22 sions of law, if nondiscriminatory treatment is not granted
23 to the People's Republic of China by reason of the occur-
24 rence of an event described in subsection (b), nondiscrim-
25 inatory treatment shall—

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

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

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

12 (b) EVENTS.—An event described in this subsection
13 means—

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

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

22 (c) DISAPPROVAL RESOLUTION.—

23 (1) IN GENERAL.—For purposes of this section,
24 the term “resolution” means only a joint resolution
25 of the two Houses of Congress, the matter after the

1 resolving clause of which is as follows: “That the
2 Congress does not approve the extension of the au-
3 thority contained in section 402(c) of the Trade Act
4 of 1974 recommended by the President to the Con-
5 gress on _____ with respect to the Peo-
6 ple’s Republic of China because the Congress does
7 not agree that the People’s Republic of China has
8 met the standards described in section 3 of the Unit-
9 ed States-China Act of 1993”, with the blank space
10 being filled with the appropriate date.

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

17 (d) DETERMINATION OF DUTY STATUS OF ENTER-
18 PRISES.—

19 (1) IN GENERAL.—Subject to paragraph (2),
20 the Secretary of the Treasury shall determine which
21 persons are state-owned enterprises of the People’s
22 Republic of China for purposes of this Act and com-
23 pile and maintain a list of such persons.

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

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

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

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

20 (III) the person’s production, pur-
21 chases of inputs, and sales of output, in
22 whole or in part, are subject to state, sec-
23 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, enter-
25 prise, instrumentality, 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. AFFECT 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 with respect to the
17 products of the People's Republic of China shall continue
18 to be governed by title IV of the Trade Act of 1974 and
19 the provisions of this Act.

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

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

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

5 **SEC. 8. DEFINITIONS.**

6 For purposes of this Act:

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

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

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

16 (B) the legal status of such person,

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

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

21 (3) **CONVICT, FORCED, OR INDENTURED**
22 **LABOR.**—The term “convict, forced, or indentured
23 labor” has the meaning given such term by section
24 307 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.

○

S 806 IS—2