Most-Favored-Nation Treatment of Imports to the United States from the U.S.S.R.

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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).

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 "non-market 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.

Editor's note: The present article was published in a revised form in the INTERNATIONAL TRADE LAW JOURNAL *of the University of Maryland School of Law, vol. 1, no. 1, p. 79 (Spring, 1975).*

Discussion

There was considerable disagreement among the American participants concerning the degree to which the Executive Branch has supported most-favored-nation treatment for imports from the Soviet Union at various times since the late 1940's. There was universal agreement, however, that most-favored-nation treatment had been withdrawn from the Soviet Union on the initiative of Congress and that Congressional opposition was the primary obstacle to renewal of most-favored-nation treatment in the early 1970's. It was also generally agreed that this state of affairs was caused by the linkage of trade policy with general foreign policy considerations in the minds of U.S. policy makers.

Mr. Metzger expressed the opinion that the linkage of trade policy with general foreign policy considerations was so close that it was useless to expect Congress to extend most-favored-nation treatment to the Soviet Union in the absence of significant improvement in the general political climate. However, he was also of the opinion that the obstacles which would be removed by most-favored-nation treatment of Soviet imports were not serious barriers to Soviet-American trade. Parenthetically, he expressed the opinion that Soviet exporters could manipulate their prices to overcome the effect of tariff barriers. In addition, he felt that the key to the future development of Soviet-American trade was the extension of U.S. government credits for exports to the Soviet Union. Since such credits were controlled by the Administration, and thus beyond the influence of a hostile Congress or public opinion, and since the business community generally favored extension of trade with the Soviet Union, trade would increase even without most-favored-nation treatment.

Another American participant agreed that the presence or absence of most-favored-nation treatment was not objectively a major factor, but stated that it was nevertheless a major psychological problem. However, still another American participant contended that there is no way of knowing the extent to which Soviet producers could compete for U.S. imports if discriminatory tariff barriers were removed.

There was also strong disagreement among the American participants concerning the extent to which "liberals" in the United States are to blame for failure to work actively to change public attitudes toward trade with the Soviet Union.

Mr. Usenko agreed with Mr. Metzger that a favorable rate of interest on credits for U.S. exports is the most rational way of expanding Soviet-American trade. However, he disagreed with the contention that most-favored-nation treatment is not an important fac-

tor in such trade. First, he pointed out, Soviet manufacturing enterprises are autonomous units operating under principles of economic accountability, and thus cannot manipulate their prices to overcome high tariff barriers. Second, the tariff discrimination involved in a denial of most-favored-nation treatment has had a material effect on Soviet exports. Mr. Usenko pointed out examples involving airplanes, electric generators, and fibers in which the applicable tariff rates range from thirty to forty percent, as opposed to six to seven percent for imports from countries enjoying most-favored-nation status. The result, he noted, is a qualitative as well as a quantitative distortion in trade patterns; only one-third of the Soviet exports to the United States are finished products while two-thirds consist of raw materials. This guarantees a balance of trade which will always be strongly in favor of the United States, and poses problems to future development. Moreover, Mr. Usenko stated, international trade is best served not by special favors, but by the uniform application of the non-discriminatory most-favored-nation standard, which, he felt, had become an international customary norm.

Mr. Metzger disagreed with Mr. Usenko's contention that there is an international customary norm requiring the establishment of most-favored-nation or any other non-discriminatory tariff regime. He contended that a country is free to discriminate or not, as it wishes, without violating any international agreement. Further, he noted, the use of the term "equitable treatment" in the 1972 Soviet-American Trade Agreement indicates that the two governments contemplated disparity of treatment among goods of various countries, at least in the case of quantitative restrictions on imports.

Mr. Usenko agreed that most-favored-nation treatment is not a requirement of international law. However, he said, non-discrimination *is* a requirement of international law, and therefore discriminatory refusal to grant most-favored-nation treatment is a violation of international law. Further, he stated, the term "equitable treatment" does not mean in the Soviet text of the Soviet-American Trade Agreement what Mr. Metzger asserted that it means in the U.S. text. The meaning assigned to the term by Mr. Metzger would be meaningless, since the Soviet Union does not have quantitative restrictions on imports. To the Soviet Union, the term "equitable treatment" signifies that the goods of each party will receive fair, that is, non-discriminatory, treatment by the other.

Further discussion disclosed that there is a significant difference between the Russian and English meanings of the word "equitable."

It was also suggested by an American participant that, in the eyes of Soviet jurists, as well as of jurists from many other countries,

but not of the United States, widespread application of a practice transforms it into a customary norm of international law. Still another American participant suggested that the basic concept from which the Soviet jurists start is that a "right to trade" exists in international law.

Mr. Usenko reiterated that non-discrimination is an established norm of international law, and he cited various authorities, including statements of the International Law Commission, for this conclusion.