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NSC/RMO PROFILE

RECORD ID: 9401061
RECEIVED: 14 FEB 94 12

CHRON FILE

TO: LAKE

FROM: SCHIFTER

DOC DATE: 14 FEB 94
SOURCE REF:

KEYWORDS: CHINA P R
MFN

HUMAN RIGHTS

PERSONS:

SUBJECT: HISTORY OF JACKSON - VANIK AMENDMENT

ACTION: NOTED BY LAKE

DUE DATE: 17 FEB 94 STATUS: C

STAFF OFFICER: SCHIFTER

LOGREF:

FILES: WH

NSCP:

CODES:

D O C U M E N T D I S T R I B U T I O N

FOR ACTION

FOR CONCURRENCE

FOR INFO
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SCHIFTER

COMMENTS: _____

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DOC 1 OF 1

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ACTION DATA SUMMARY REPORT

RECORD ID: 9401061

DOC ACTION OFFICER

001 LAKE
001

CAO ASSIGNED ACTION REQUIRED

Z 94021621 FOR INFORMATION
X 94030914 NOTED BY LAKE

UNCLASSIFIED

National Security Council
The White House

recd 2/15
6:37 PM

PROOFED BY: _____ LOG # 1061
URGENT NOT PROOFED: _____ SYSTEM PRS NSC INT
BYPASSED WW DESK: AP DOCLOG AP A/O _____

	SEQUENCE TO	HAS SEEN	DISPOSITION
<u>W</u> DepExecSec	<u>1</u>	<u>Walt</u>	
ExecSec			
Staff Director			
<u>MR</u> D/APNSA	<u>2</u>	<u>alt</u>	
APNSA	<u>3</u>		
Situation Room		Natl Sec Advisor has seen	
West Wing Desk	<u>4</u>	<u>3/9</u>	<u>[Signature]</u>
NSC Secretariat	<u>5</u>		

A = Action I = Information D = Dispatch R = Retain N = No Further Action

cc: VP McLarty Other _____

Should be seen by: _____
(Date/Time)

COMMENTS:

CC: NS

DISPATCH INSTRUCTIONS:

Fony,

2/14

From here on in you'll hear
from me on CEE.

Dick

NATIONAL SECURITY COUNCIL

WASHINGTON, D.C. 20506

1061

Natl Sec Advisor
has seen

February 14, 1994

MEMORANDUM FOR ANTHONY LAKE

FROM: RICHARD SCHIFTER *RS*

SUBJECT: History of the Jackson-Vanik Amendment

I am sure you are familiar with the history of the Jackson-Vanik Amendment, but assume that in light of the current debate a brief restatement might be of some use.

The media discussion of our relations with China suggests that delinking MFN from Chinese human rights behavior would constitute a historic retreat from a traditional U.S. position. The facts are that linkage between trade and human rights behavior generally (a) is not called for and was not the intent of the underlying statutory provision, the Jackson-Vanik Amendment, (b) was first suggested more than twelve years following the Amendment's enactment, and (c) has been considered in only two instances.

Limited exclusively to emigration policy, the Jackson-Vanik Amendment is a precursor of the more comprehensive human rights legislation which Congress began to enact in 1975. It was passed at a time when Congress had not as yet mandated the infusion of human rights concerns into the formulation of U.S. foreign policy. It was part of a law which made Communist countries, thus egregious human rights violators, eligible for MFN status as long as their emigration policies were fairly benign.

Jackson-Vanik came about in the following set of circumstances: As part of the detente policy, Kissinger decided in September 1972 to enter into a trade agreement with the Soviet Union which would grant it MFN status. A new trade bill authorizing such an agreement was then pending in the Congress. Just as Kissinger made his move the Soviets reversed their rather recent relaxation of emigration restrictions by imposing a substantial exit tax. That caused Senator Jackson to propose an amendment to the trade bill which would preclude the granting of MFN status to any "nonmarket economy" country which severely restricts emigration. After two years of wrangling between Kissinger and Jackson the trade bill became law in December 1974, and the Jackson Amendment was part of it. The Trade Act of 1974 thus expressly and intentionally authorizes trade relations and MFN status for Communist countries as long as their emigration policy meets the requirements of U.S. law.

Once the law had been enacted it was administered in accordance with its letter and spirit. In 1975 a trade agreement was signed with Ceausescu's Romania and after the normalization of relations with China, an agreement with China also won approval. In both instances emigration policy was found to be in compliance with Jackson-Vanik standards. The fact that both countries severely limited fundamental freedoms was deemed irrelevant. In the case of the Soviet Union, there was serious discussion in 1979, when Jewish emigration exceeded 50,000, of indicating that Jackson-Vanik standards had been met. The invasion of Afghanistan and the precipitous drop in exit permits ended that discussion.

Under Jackson-Vanik one-year waivers based on progress in the emigration field were granted to Romania and China, subject to Congressional concurrence, and were renewed annually. In 1986 or 1987 some members of Congress began to question the waiver for Romania, angered in particular by Ceausescu's repressive measures against non-Orthodox Christian denominations. Congress nevertheless went along with the waivers. However, rather than go through the annual Congressional debate on his human rights performance, Ceausescu canceled the trade agreement in 1988.

In the case of China, no question about MFN status was raised until the summer of 1990, more than a year after Tiananmen Square. I recall being at a briefing of President Bush in May 1990, just before Gorbachev was to arrive, on MFN for the Soviet Union. In the course of the briefing Brent Scowcroft remarked: "I wonder why no one raises the issue of MFN for China." A few months later Nancy Pelosi discovered this Achilles heel. I believe it was resorted to because the Administration was viewed as failing to push the Chinese human rights issue with sufficient vigor.

Thus, returning to the practice of linking MFN status only to emigration would mean no more than adhering to the letter and spirit of the law and to the policy which was followed in administering the law during most of the time it was on the books. If the Chinese were willing to bring their emigration law into full harmony with international standards, a finding of full compliance could be made, thus ending the annual reviews for waiver purposes. Alternatively, the question could be examined as to whether China is still a "nonmarket economy" country. If it is not, Jackson-Vanik simply does not apply.

Concurrences by: Kent Wiedemann, Alan Kreczko

missing piece: after Tiananmen, Congress passed -- and Bush vetoed -- legislation protecting Chinese students in U.S. from return to China when visas expired. HR leaders like Pelosi looked around for leverage and latched onto MFN.