

China, Trade and Human Rights

By STEVE CHARNOVITZ

The Chinese government is not cooperating with President Clinton. He told Beijing quite clearly last May what he wanted them to do. His executive order lists reforms China should carry out, including the release of political dissidents from prison, respect for the Universal Declaration of Human Rights and several others. Unfortunately, China is not following the order.

That leaves Mr. Clinton in a quandary. He must decide by June 3 whether to renew most-favored-nation (MFN) status for China despite the lack of progress on human rights. Renewal probably would be perceived in many world trouble spots as a sign of American irresolution.

Yet not renewing MFN would be costly to U.S. businesses and consumers who import \$32 billion of Chinese goods each year. Neither option would have any certain impact on human rights.

Unhappy with choosing between those two options, some administration officials are exploring a middle course. They want to renew MFN for the private sector but not for state-owned companies. This scenario — which one might call giving China the "MF" but not the "N" — would be a nightmare to implement. It also would run contrary to international law.

In the face of this predicament, Mr. Clinton should choose his least worst option. That is, he should renew MFN for China.

Contrary to much commentary on this subject, there are no general human rights standards in U.S. trade law. The Jackson-Vanik amendment to the Trade Act of 1974, which provides for the annual presidential waiver, relates solely to whether a non-market, or communist, country permits emigration.

According to the U.S. State Department's recent human rights re-

port, China "routinely permits legal emigration," although a few of its citizens do face obstacles to foreign travel. Since China meets the Jackson-Vanik test, there is no legal bar to a renewal of the waiver by Mr. Clinton.

The executive order of 1993 complicates the matter. The order goes beyond Jackson-Vanik by addressing prison labor and other human rights concerns. But unlike the Trade Act of 1974, the executive order does not apply to the president. It applies only to the secretary of State.

Specifically, Mr. Clinton's executive order says the secretary of State shall not recommend MFN renewal unless certain human rights conditions are met.

So Secretary of State Warren Christopher may have to recommend pulling MFN from China. If, despite this recommendation, the president renews MFN anyway, the administration will be faithfully carrying out its own executive order.

It was probably unwise for President Clinton to have sought to use an executive order to transform Jack-

son-Vanik into a human rights standard. MFN is a rather inflexible tool and the Chinese government surely understands the difference between a law and an administrative order.

Moreover, the executive order on China was discriminatory. Why should a new human rights test be imposed just on China when scores of other countries enjoying MFN violate the same human rights?

If a straight renewal of MFN presents too many political problems for the administration, then it should combine the renewal with targeted sanctions under Section 301 of U.S. trade law. The worker rights provision in Section 301 seems especially appropriate given that China is an egregious violator of internationally recognized labor standards.

Since China is not yet a GATT member, using Section 301 in this manner would not be GATT illegal. Such trade bans would not even violate the spirit of the GATT if they ban goods produced using prison labor. The GATT contains a special exception to permit nations to dis-

criminate against prison-made products.

In renewing MFN for China, the administration need not disavow linking trade policy to human rights. But that difficult linkage should be pursued mainly through multilateral institutions, not unilateral actions. When a country is a human rights pariah — for example, Haiti — trade sanctions may be appropriate, especially as part of a concerted campaign to force internal change.

International commerce does not require that trading nations have the same kind of government. Free nations can trade with dictatorships to their mutual benefit. Attempting to vary one's tariff according to the degree of democracy in the exporting nation would be a terrible idea. But that does not mean that world commerce always has to trump human rights. In the most egregious cases, multilateral sanctions may be needed.

There may also be rare occasions when the American public is so outraged with foreign repression that we feel a collective need to invoke trade sanctions on our own. President Reagan did this in 1982 when he yanked MFN from Poland following the military crackdown against Solidarity. The Chinese government's attack on Tiananmen Square might also have justified trade retaliation. But the right time to impose such "punishment" would have been 1989. Now it's too late.

However the China issue evolves over the next few weeks, one hopes the administration will learn some lessons. Here are three: Don't make unrealistic demands, especially on foreigners. Don't expect to achieve much by threatening unilateral trade sanctions. Look for smarter ways to promote human rights.

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