

RECENT DEVELOPMENTS

TRADE — MOST-FAVORED-NATION STATUS — THE 1975 AGREEMENT WITH ROMANIA ON TRADE RELATIONS.

The United States has concluded the first bilateral trade agreement¹ under article IV of the Trade Act of 1974² by granting most-favored-nation (MFN) treatment to the goods of the Socialist Republic of Romania.³ The agreement reflected a series of attempts by the Executive Branch to obtain MFN status for Romanian goods.⁴ Romania had been the only member of the Council of Mutual Economic Assistance (CEMA)⁵ to accept, by impli-

¹ Agreement with Romania on Trade Relations, April 2, 1975, T.I.A.S. No. 8159, (effective August 3, 1975) [hereinafter cited as Trade Agreement]. A similar agreement was reached in 1972 with the Soviet Union, but it was later renounced by them after the passage of the Trade Act. Trade Act of 1974, 19 U.S.C. § 2101 (Supp. IV, 1974) [hereinafter cited as Trade Act]. The Soviet agreement can be found at 67 DEP'T STATE BULL. 595 (1972). The Romanian agreement is the first test of the Trade Act in granting MFN status to communist countries. Only Yugoslavia and Poland have been granted this status under prior agreements. Protocol for the Accession of Yugoslavia to the General Agreement on Tariffs and Trade, *done* July 20, 1966, T.I.A.S. No. 6185, 17 U.S.T. 2379, 572 U.N.T.S. 296 (entered into force for the United States Aug. 25, 1966); Protocol for the Accession of Poland to the General Agreement on Tariffs and Trade, *done* June 30, 1967, T.I.A.S. No. 6430, 19 U.S.T. 4331, 609 U.N.T.S. 236 (entered into force for the United States Oct. 18, 1967).

² Trade Act, *supra* note 1.

³ Romania is a basically homogeneous society. Culturally of Latin origin, about 80 percent of the population is nominally Romanian Orthodox. Ethnically, 87 percent are Romanian; there are large Hungarian and German minorities. It is geographically the size of the United Kingdom and has a population of 20.8 million with a 0.7 to 0.8 percent government encouraged growth rate. BUSINESS INTERNATIONAL S.A., *DOING BUSINESS WITH ROMANIA* 1-3 (1973) [hereinafter cited as *DOING BUSINESS WITH ROMANIA*]. Economic development has been remarkable. Per capita national income rose 2.3 times from 1960 to 1971. For the same period, Czech per capita national income rose only 1.5 times, East Germany 1.6, Hungary and Poland each 1.7. This has been at the price of Romania returning one-third of the national income to industrial development, while Hungary reinvests only one-fifth. Lendvai, *Romania: The Austere Leap Forward*, Financial Times, May 14, 1974, at 7, col. 5 [hereinafter cited as Lendvai].

⁴ The real push for United States-Romanian trade came after the 1968 Nixon visit to Bucharest. USITC, *SPECIAL REPORT TO THE CONGRESS AND THE EAST-WEST FOREIGN TRADE BOARD ON IMPORT ON U.S. IMPORTS OF GRANTING MOST-FAVORED-NATION TREATMENT TO ROMANIA*, A2 (1975) [hereinafter cited as USITC].

⁵ The CEMA (also known as COMECON) is composed of the Union of Soviet Socialist Republics, Poland, Hungary, Czechoslovakia, German Democratic Republic, Romania, Bulgaria, Mongolia, and Cuba. Other members of CEMA have denounced the Trade Act as an attempt by the United States to interfere in their internal affairs. The agreement with the Soviet Union failed in part due to the Trade Act's requirements in regard to emigration. Trade Act, *supra* § 2432. The Secretary of State's announcement of the Soviet renouncement makes reference to this emigration requirement as a reason for the failure of the agreement. 72 DEP'T STATE BULL. 139 (1975).

cation, the Trade Act's conditions and to enter into such an agreement.⁶ For the United States the agreement was primarily an attempt to normalize its relations with the communist world under the rubric of detente.⁷ The Romanians saw the agreement as another opening for greater trade with the West and as a means for greater economic development.⁸ *Agreement with Romania on Trade Relations*, April 2, 1975.

Much of the change in relations between the United States and Romania has been a result of political and economic changes in Romania.⁹ In the late 1950's Romania, as other East European states, followed plans dictated by Moscow through the CEMA. Under the Soviet plans Romania was to remain principally a supplier of raw materials and was not to become a developed producer. However, the Romanian leadership rejected this role and began to implement a policy of economic development through purchases from the West.¹⁰ Romanians maintained a strictly neutral position, and in 1968 when the Soviets invaded Czechoslovakia, the Romanian government condemned the invasion.¹¹ Romania has been able to escape the Czechoslovak experience primarily because, even though its foreign policy statements may be different from those of the Soviet Union,¹² its internal policy has remained within the Soviet mold.¹³ Its external independence

⁶ Frank, *Trade Report Emigration Stalls Romania Pact: Settlement Could Serve as Model*, 7 NAT'L J. REP. 823 (1975).

⁷ *Id.*

⁸ *Rumanian Situation Report/13*, 1975 RADIO FREE EUROPE RESEARCH: PART I, EASTERN EUROPE, at 2.

⁹ See generally DOING BUSINESS WITH ROMANIA, *supra* note 3.

¹⁰ Romania had received much less aid from the Soviets than had other East European countries. From 1945 to 1962 Soviet aid to Romania was US \$10 per capita while it was \$78 in East Germany, \$73 in Bulgaria, and \$38 in Hungary. This kept Romanian industrialization slow. Khrushchev's 1963 plan to make CEMA a supranational planning body was rejected and Romanian trade was reoriented toward the West. Schopflin, *Rumanian Nationalism*, 20 SURVEY: J. EAST & WEST STUDIES 77 (Spr.-Sum. 1974). See D. TURNOCK, AN ECONOMIC GEOGRAPHY OF ROMANIA 133-36, 295-97 (1974) [hereinafter cited as TURNOCK].

¹¹ In 1970 a new 20 year friendship treaty was signed with Moscow, but in 1971 Ceausescu was visiting in Peking. King, *The Problems of Rumanian Foreign Policy*, 20 SURVEY: J. EAST & WEST STUDIES 105, 106 (Spr.-Sum. 1974) [hereinafter cited as King]. It even refused to join its Warsaw Pact neighbors in a condemnation of the United States, West Germany, and Israel. R. GRIPP, THE POLITICAL SYSTEM OF COMMUNISM 166 (1973). Romania is the only East European country still to maintain diplomatic relations with Israel. Kamm, *Rumanians Tighten Emigration Curbs*, N.Y. Times, April 29, 1975, at 4, col. 4 [hereinafter cited as Kamm].

¹² The independent foreign policy expressed by Romania was important in congressional consideration of the agreement. This was especially true in the House of Representatives. 121 Cong. Rec. 7620-27 (daily ed. July 28, 1975).

¹³ Romania has not experienced the economic reform which has taken place in other socialist countries such as Hungary and Poland. R. SELUCKY, ECONOMIC REFORMS IN EASTERN EUROPE 151 (1972). On April 11, 1975 President Ceausescu is reported to have demanded that the annual plan "should make provision for everything, including every single component, every single screw Every single investment outlay, even if its [sic] worth only 1,000 lei, . . . must be spelled out in the plan." Lendvai, *supra* note 3. The exchange rate has been 4.97 lei

has been to serve the primary purpose of greater economic development.¹⁴

What economic reform has offered in Romania has been in the area of foreign trade.¹⁵ The Bank of Foreign Trade was created in 1968. The industrial central concept was established in 1969.¹⁶ In 1971 Romania passed its joint venture legislation¹⁷ and joined the General Agreement on Tariffs and Trade (GATT).¹⁸ In 1972 it joined the International Monetary Fund

for one dollar since Feb. 24, 1973. *Rumanian Situation Report/10* 1974 RADIO FREE EUROPE RESEARCH: PART I, EASTERN EUROPE, at 6. There are those who feel it is too strong a statement to say no real reform has occurred. Much emphasis is placed on the shift of some authority to the industrial centrals *See* note 18 *infra*. However, only some daily management has been shifted to them. I. SPIGLER, *ECONOMIC REFORM IN RUMANIAN INDUSTRY* 164 (1973). It is yet to be seen how the agreement's provisions for direct negotiations between United States and Romanian companies will work. There has been even less indication of political reform. Lendvai describes internal policy as a variety of the "Great Leap Forward." Despite economic development, the standard of living has not greatly improved. Lendvai, *supra* note 3. And even though there is the apparent liberal foreign policy, there is a tightening of control over internal thought and writing. Kamm, *supra* note 11.

¹⁴ TURNOCK, *supra* note 10; Lendvai, *supra* note 3.

¹⁵ Burgess, *The Socialist Republic of Romania*, in *EAST WEST BUSINESS TRANSACTIONS* 272 (R. Starr ed. 1974) [hereinafter cited as Burgess].

¹⁶ Industrial centrals are autonomous economic units made up of a union of enterprises producing similar products. It was hoped that this would result in unified management. They were given the power to directly engage in foreign trade. Nevertheless, overall control has remained in the Ministry of Foreign Trade. Burgess, *supra* note 15, at 274-76.

¹⁷ Romanian joint venture legislation represents Romania's most pronounced attempt to obtain foreign capital for economic development. Romanian joint venture legislation is set out in English in *DOING BUSINESS IN ROMANIA* *supra* note 3, at 145. It was the first member of CEMA to allow such investments. Joint ventures may be in a variety of areas, but the emphasis is upon exports. The first joint venture was with Control Data Corporation (CDC) on April 24, 1973, for the manufacture of peripheral products for computers. Ownership is divided into 45 percent for CDC and 55 percent for Romania. The joint venture legislation requires that Romania have at least 51 percent control, thus supposedly preserving the Marxist principle of state ownership. One of the enticements offered to foreign investment is a guarantee of the Romanian share by the Romanian government. All transactions are to be in hard currency and profits are freely transferable abroad subject to local taxes. Such transfers are through the Bank of Foreign Trade. Interest will be paid on joint venture funds, and a transfer of funds into lei will be at the rate established for noncommercial transactions of 14.38 lei to the dollar instead of the usual commercial rate of 4.97. Settlement of disputes may be by Romanian courts or international arbitration. Many of these provisions, especially in the area of taxation, have been affected by the Dec. 15, 1973 declarations. *See* note 32. For more detailed information on joint venture legislation in Romania *see* *DOING BUSINESS WITH ROMANIA*, *supra* note 3, at 79-85, 145-50; Burgess, *supra* note 15, at 290-301; and Burgess, *Direct Foreign Investment in Eastern Europe: Problems and Prospects of Romania's Joint Venture Legislation*, 6 L. & POL. IN INT'L BUS. 1059 (1974).

¹⁸ Romania requested admission to GATT on July 22, 1968. Final admission came on Oct. 15, 1971. The accession agreement, *Protocol for the Accession of Romania to the General Agreement on Tariffs and Trade*, 807 U.N.T.S. 312 (1972) [hereinafter cited as *Protocol*], provided that restrictions by contracting parties should be eliminated by the end of 1974. The United States invoked Article XXXV of the General Agreement against Romania. Due to Romania's command economy it was necessary that the Protocol contain certain promises by Romania. The key promise was a commitment that imports from market economies would increase in proportion to growth of total imports as set forth in the national economic plan.

(IMF) and the World Bank.¹⁹ A recent development in Romanian policy has been an increasing identification with the developing nations, as well as a request to the Common Market to grant it preferential treatment on such a basis. However, similar attempts at membership in the United Nations Conference on Trade and Development, which would have entitled Romania to Western trade preferences, have failed.²⁰

Shortly after the close of World War II the United States instituted special controls upon its trade relations with communist states,²¹ which were subsequently relaxed on a country by country basis.²² Romanian movements to expand Western trade also led to reciprocation by the United States,²³ but bills to grant MFN status introduced in Congress produced no results.²⁴

In 1971, after Romania had signed GATT,²⁵ a major stimulus to trade occurred when Export-Import (EXIM) Bank credits were granted.²⁶ These movements were followed by the December 5, 1973 visit of Romanian President Ceausescu to Washington,²⁷ culminating in the issuance of two important statements by the two governments. The first was a Joint Statement of Principles, in which both nations affirmed the principles of the United Nations Charter.²⁸ The second was a Joint Statement on Economic,

Protocol, *id.*, annex B. See also Note, Accession of Poland to the GATT, 24 STAN. L. REV. 748 (1972); General Agreement on Tariffs and Trade, *done* Oct. 30, 1947, T.I.A.S. No. 1700, 61 Stat. (5), (6) 55-61 U.N.T.S. (entered into force for the United States Jan. 1, 1948).

¹⁹ Burgess, *supra* note 17.

²⁰ King, *supra* note 11, at 116-17.

²¹ Trade Agreements Extension Act of 1951, ch. 141, § 5, 65 Stat. 73. This Act withdrew MFN status from the goods of these states and made these goods susceptible to the column 1 duties except for those states listed in the statute.

²² USITC, *supra* note 4, at A1. See also the protocols of accession by Poland and Yugoslavia in note 1.

²³ *Id.*

²⁴ *Id.*, at A2.

²⁵ Burgess, *supra* note 15, at 278-79.

²⁶ In March 1974 the consideration of about 100 loans, bank guarantees and insurance transactions to East European countries was temporarily suspended on the basis of an opinion from the General Accounting Office stating that because President Nixon had not made individual rulings concerning each country such loans might be illegal. The loans to Romania affected amounted to US\$192 million. Loans of \$62.7 million already made to Romania were not affected. *Rumanian Situation Report/10*, 1974 RADIO FREE EUROPE RESEARCH PART I, EASTERN EUROPE, at 8. Romania was recognized by the World Bank as a developing country for the purpose of receiving low-interest development loans. Membership in the IMF qualified Romania for assistance by granting access to the IMF's Special Drawing Right Account. Burgess, *supra* note 15.

²⁷ This visit reciprocated President Nixon's 1969 visit. In regard to the 1969 visit, see N.Y. Times, Aug. 3, 1969, at 1, col. 8.

²⁸ *Joint Statement of Principles by President Nixon and President Ceausescu*, 9 PRESIDENTIAL DOCUMENTS: RICHARD NIXON 1396 (Dec. 5, 1973). This statement was very important in the resulting agreement and is specifically referred to in the Agreement's preamble. President Ford also used the statement as the basis for his waiver of the emigration requirements of section 402 of the Trade Act. *Hearings on H. Con. Res. 252 Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 94th Cong., 1st Sess., 11-12 (1975).

Industrial, and Technological Cooperation, a reaffirmation of earlier commitments by the United States Executive Branch to seek a normalization of trade relations between the two countries.²⁹ The visit also resulted in the establishment of the American-Romanian Economic Commission, an intergovernmental body whose purpose was to facilitate trade relations, and the United States-Romanian Economic Council, established by the Chambers of Commerce of the two countries to aid businesses in trade and investment. Overall, the visit was beneficial to the relations between the countries.³⁰

In April of 1975 the present trade agreement was concluded, and President Ford presented it to the Congress for the required approval of both Houses.³¹ He also submitted an executive order³² waiving the provisions³³ of the Trade Act requiring freedom of emigration. The issue of emigration has received much attention in regard to the Trade Act. This issue and the small amount of trade credits to be granted were blamed as the reasons

²⁹ *Joint Statement on Economic, Industrial, and Technological Cooperation between the United States of America and the Socialist Republic of Romania*, 9 PRESIDENTIAL DOCUMENTS: RICHARD NIXON 1398 (December 5, 1973). This statement is also reaffirmed in the preamble to the Trade Agreement. Many of the economic and commercial desires expressed in this statement reached fruition in the agreement, principally MFN status. This statement was itself a major movement in several respects. First, it recognized Romania as a developing country and therefore eligible for assistance through insuring and financing of American investments by the United States Overseas Private Investment Corporation. Secondly, it established guidelines to facilitate trade including joint ventures.

³⁰ The visit also speeded up talks with American firms. Manufacturer's Hanover Trust Bank opened the first branch of an American bank in Bucharest on May 26, 1974. *Rumanian Situation Report/18* 1974 RADIO FREE EUROPE RESEARCH, PART I, EASTERN EUROPE, at 18. Control Data was the first American firm to enter Romania through its recent (1971) joint venture legislation. It opened in April of 1973. Burgess, *supra* note 17, at 293. More recently the United States and Romania signed a five year agreement on cooperation and exchange. Agreement with Romania on Cooperation and Exchange in Cultural, Educational, Scientific and Technological Fields, Dec. 13, 1974, T.I.A.S. No. 8006 (entered into force Jan. 1, 1975).

³¹ The Trade Act requires that both Houses approve implementing legislation by majority vote before agreements can enter into force. This requirement applies generally to agreements under the act. This positive requirement of congressional approval and the prior existing statute should satisfy any constitutional questions as to the power of the President to bind the United States through such an executive agreement. Trade Act, *supra* note 1, at § 2191.

³² Exec. Order No. 11854, 3A C.F.R. 156, 19 U.S.C. 2432 (1975).

³³ Section 402(c) of the Trade Act, *supra* note 1, allows the President to waive the freedom of emigration requirements for any country so long as he reports to Congress that (1) he has determined that such a waiver would promote freer emigration, and (2) he has received assurances that the emigration practices of such country will lead to freer emigration. The waiver authority extends for a period of 18 months after the date of enactment of the Trade Act, *i.e.*, to July 4, 1976, and may be renewed yearly thereafter subject to congressional review and veto by either House according to Sec. 402(d). The President in a statement to Congress said that he took the statements made in the "Declaration of the Presidents" (also called the Joint Statement of Principles) as sufficient public assurances. The statement was that "they [the two governments] will contribute to the solution of humanitarian problems on the basis of mutual confidence and good will." *Joint Statement of Principles*, *supra* note 28, at 1397.

for the failure of the Soviet-American trade agreement.³⁴ The emigration issue received much attention when the Romanian agreement came before Congress. Only days before the agreement was signed, Ceausescu stated that he hoped the United States would not insist on linking MFN status to liberalized emigration. Romanian media avoided all mention of the American requirements after the agreement was signed.³⁵

There was some indication that the Romanians had tightened the flow of emigration in the first months of 1975. Major Western embassies were reported to have one-third to one-half fewer visa requests than over the first quarter of 1974.³⁶ State Department reports to the House of Representatives showed that there were 407 emigres to the United States in 1974 but only 95 from January to June 1975. There were approximately 3,600 emigres to Israel in 1974. The United States embassy was informed by the Romanian government that 694 applications had been accepted from mid-May 1975 to the mid-July 1975 hearings on the Trade Agreement. It was further reported that 2,000 Jews had been approved for emigration to Israel in the first half of 1975.³⁷

In a memorandum from the Library of Congress, a history of Romanian emigration practices was presented to the Congress. Since 1971 what has been described as the Romanian version of the Great Leap Forward has resulted in strict internal regulation with resulting emigration controls. Romanians cannot afford the massive loss of skilled labor. The Jews as an ethnic group are the most advanced group in Romania although they are diminishing rapidly.³⁸ However, Romania has the largest Jewish population in any East European country outside the Soviet Union.³⁹ Romania's emigration practices have varied according to Romanian policy objectives. At the present time it is projected that 30,000 - 40,000 wish to emigrate. Notwithstanding the poor showing of Romanian emigration in 1975, the Senate approved the resolution.⁴⁰

In June 1975 President Ceausescu made a stopover in Washington⁴¹ after a Latin American trip to try to obtain congressional approval for the agreement before the sixty day time limit had expired.⁴² Finally in late July 1975

³⁴ See note 5 *supra*; TIME, Jan. 27, 1975, at 34.

³⁵ *Rumanian Situation Report/13*, *supra* note 8, at 3.

³⁶ Kamm, *supra* note 11.

³⁷ H.R. REP. No. 359, 94th Cong., 1st Sess. 3-4 (1975) [hereinafter cited as H.R. REP. NO. 359].

³⁸ Gilberg, *Ethnic Minorities in Romania under Socialism*, 7 EAST EUROPEAN Q. 435, 440 (1974).

³⁹ Estimates of the current population are 70,000-120,000. This is below the estimated 400,000 at the end of World War II. *Id.*

⁴⁰ However, statements were made in the Senate to the effect that Romania's emigration policy should be improved if the Congress is to be expected to give its reapproval. 121 *Cong. Rec.*, 13, 733-35 (daily ed. July 25, 1975).

⁴¹ See Washington Post, June 12, 1975, at 2, col. 1.

⁴² Ceausescu met with representatives of Jewish organizations such as Rabbi Israel Miller

while President Ford was at the Helsinki Conference on European Security and Cooperation, the Congress approved the agreement.⁴³ In recognition of this accomplishment, President Ford stopped in Bucharest on his way home to salute the improved American-Romanian relations.⁴⁴

The primary purpose of the trade agreement was to grant MFN status to Romanian goods.⁴⁵ This status was granted in reference to GATT due to the Romanian commitment to increase imports from market economies.⁴⁶ There is also the recognition of Romania as a developing country⁴⁷ raising the possibility that Romania may be eligible for preferences under the Generalized System of Preferences (GSP) of the Trade Act.⁴⁸ Article II foresees a tripling in trade over the three year life of the agreement.⁴⁹ Such a provision is seen as a balance in concessions from the Romanians for the granting of MFN tariff rates. There are protections against "market disruptions within a domestic industry" allowing consultations between the parties and, if necessary, unilateral suspension of trade in certain products.⁵⁰

of the Conference of Presidents of Jewish Organizations. He also spoke with Speaker Carl Albert, House minority leader John Rhodes, Senate minority leader Hugh Scott, Senators Henry Jackson and Abraham Ribicoff, and Representative Charles Vanik. *Id.*; *Rumanian Situation Report/23*, 1975 RADIO FREE EUROPE RESEARCH: PART I, EASTERN EUROPE, at 2.

⁴³ The resolution read: "the Congress approves the extension of nondiscriminatory treatment with respect to the products of the Socialist Republic of Romania transmitted by the President to the Congress on April 24, 1975." H.R. Res. 252, 94th Cong., 1st Sess., 121 CONG. REC. 7629 (daily ed. July 28, 1975) S. Res. 35, 94th Cong., 1st Sess., 121 CONG. REC. 13740 (daily ed. July 25, 1975).

⁴⁴ Wall Street J., Aug. 4, 1975, at 1, col. 3.

⁴⁵ Trade Agreement, *supra* note 1, art. I.

⁴⁶ The link to GATT has real importance because the Romanian GATT protocol committed Romania to increasing imports from market economies in proportion to the growth of total imports as set out in the national economic plan. *See* note 18.

⁴⁷ Trade Agreement, *supra* note 1, art. I, para. 3.

⁴⁸ GSP treatment is provided for under subchapter V of the Trade Act. The agreement removed the limitation on Romania's eligibility under section 502(b)(1) which referred to communist countries which did not receive MFN treatment. The President must determine the other eligibility requirements which include the question of expropriated property under sec. 502(c) of the Trade Act. Only US\$9.2 million of the 1974 total United States imports of \$125.8 million from Romania, or 7.3 percent, could qualify. These products are mainly glassware, chemicals, and furniture. The average tariff before MFN Status was 36.8 percent, the average MFN rate is 15.3 percent, and GSP products enter duty free. H.R. REP. No. 359, *supra* note 37, at 3.

⁴⁹ Such a provision for the expansion of trade was necessary because "[t]he United States regards tariff concessions from state-trading countries as generally meaningless, since demand for imports is independent of how the state chooses to tax itself in the form of tariffs. As a substitute for tariff concessions and in accordance with the balance of concessions called for in section 405 [of the Trade Act], Romania is committed to triple imports of United States manufactured goods over the initial three year period of the Agreement." Letter from Robert B. Wright to Thad Simons, Sept. 22, 1975. Mr. Wright is Director of the Department of State's Office of East-West Trade. *See* H.R. REP. No. 359, *supra* note 37, at 2.

⁵⁰ Trade Agreement, *supra* note 1, art. III, para. 1. This was required by section 405(b)(3) of the Trade Act. The agreement provides for consultation, and, if necessary, either party may

Business facilitation is one of the most detailed provisions of the agreement.⁵¹ Proposing various measures, the most important provides a guarantee of treatment no less favorable than that accorded third country nationals.⁵² The Convention of Paris for the Protection of Industrial Property (as revised in 1967) and the Universal Copyright Convention (as revised in 1971) are recognized, and each party agrees to provide the same legal protection for industrial rights to the companies of the other as it provides its own.⁵³ MFN treatment also applies to financial transactions. Freely convertible currency is to be used, and no restrictions are to be placed on the transfer of funds obtained in an authorized manner.⁵⁴ Navigation rights (except fishing) also are covered by the MFN treatment.⁵⁵ Disputes are to be settled in the manner provided by contract; specific arbitration provisions are expected to be provided by the contracting parties.⁵⁶ In addition, governmental commercial offices will be allowed on unrestricted reciprocal basis.⁵⁷

The last three articles provide for review and reconsideration of the agreement's provisions.⁵⁸ National security interests of either are not limited by the agreement.⁵⁹ The Joint American-Romanian Economic Commission shall review the operation of the agreement and recommend changes when necessary. The last article is of prime importance because it provides for an escape clause if either party is unable to fulfill its obligation.⁶⁰ This clause is particularly important to the United States because

impose restrictions. On March 13, 1975 the United States International Trade Commission (USITC) received advice from the Treasury Department that welt work shoes from Romania were, or were likely to be sold in the United States for less than fair value. The USITC on June 13, 1975 determined that United States industry was not endangered. The General Director of Arpimax, the Romanian Foreign Trade Company, advised the USITC of Romania's intentions to set a 500,000 pair limit for exports to the United States in 1975. USITC, *supra* note 4, at A46.

⁵¹ Trade Agreement, *supra* note 1, art. IV and annex 2. Section 405(b) of the Trade Act, in addition to requiring safeguard arrangements as provided in art. III and a satisfactory balance of concessions as provided in art. II, specifies eight additional provisions to be included. These cover suspension or termination of the agreement for national security reasons (art. X), protection of patents and trademarks, copyrights, and industrial rights and processes (art. V), arrangements for the settlement of commercial disputes (art. VIII), arrangements for promotion of trade (art. IV and IX), consultations for reviewing the agreements operation (art. XI), and such other arrangements of a commercial nature as will promote the Trade Act's purposes.

⁵² Trade Agreement, *supra* note 1, art. IV.

⁵³ *Id.* art. V.

⁵⁴ *Id.* art. VI.

⁵⁵ *Id.* art. VII.

⁵⁶ *Id.* art. VIII.

⁵⁷ *Id.* art. IX.

⁵⁸ *Id.* art. X, XI, XII.

⁵⁹ *Id.* art. X.

⁶⁰ This escape clause, art. XII(c), although not directly required by the Trade Act, is necessary in the operation of section 402 of the Trade Act. The Soviet trade agreement of 1972, which was renounced in Jan. 1975 after passage of the Trade Act, contained no such provision.

of the uncertainty of continued domestic legal authority under section 402 of the Trade Act. The duration of the agreement is three years, with periodic extensions.⁶¹

The effect of the trade agreement will be both economic and political. Economically, expansion in trade traceable to the agreement will be only in certain limited areas. Between 1965 and 1974 total trade between the United States and Romania grew from 8.1 million to 402.0 million dollars. In spite of this large increase Romania accounted for only 0.2 percent of total United States trade in 1974.⁶² Petroleum (first imported in 1967)

UNITED STATES TRADE WITH ROMANIA
(Thousands of U.S. dollars)

U.S. EXPORTS		1964	1968	1973	1974
Schedule B	Commodity				
0	Food and live animals	179.1	483.0	38,203.4	93,350.6
1	Beverages and tobacco	2,336.4	11.1		132.7
2	Crude materials—Inedible, except fuel	1,253.3	2,584.4	40,585.9	69,159.6
3	Mineral fuels, lubricants, et cetera	379.6	965.8	5,893.8	5,450.1
4	Oil and fats—Animal and vegetable	480.9			
5	Chemicals	11.5	1,197.0	5,691.0	7,939.0
6	Manufactured goods classified by chief material	411.4	2,610.1	4,951.8	10,722.9
7	Machinery and transport equipment	103.3	7,829.6	20,408.0	88,237.8
8	Miscellaneous manufactured articles		2,485.1	633.5	1,649.9
9	Commodities and transactions not elsewhere classified		20.2	142.9	382.9
	Total	5,137.4	18,186.3	116,510.3	277,115.6
U.S. IMPORTS		1964	1968	1973	1974
Schedule A	Commodity				
0	Food and live animals	175.8	881.7	7,721.3	11,145.5
1	Beverages and tobacco	1.1	5.1	36.4	192.0
2	Crude materials—Inedible, except fuel	72.1	581.7	990.5	1,024.5
3	Mineral fuels, lubricants, et cetera		848.2	15,763.0	76,406.7
4	Oil and fats—Animal and vegetable				
5	Chemicals	2.4	30.5	548.0	3,639.1
6	Manufactured goods classified by chief material	445.4	679.1	7,232.6	5,816.4
7	Machinery and transport equipment		94.4	6,253.1	8,553.1
8	Miscellaneous manufactured articles	535.3	2,633.4	16,800.8	18,691.1
9	Commodities and transactions not elsewhere classified	4.8	65.7	353.2	351.4
	Total	2,123.7 ¹	3,581.9 ²	35,570.9 ³	112,581.9

¹ Because of rounding the sum of the column may not equal the total.

² U.S. imports for consumption.

³ U.S. general imports.

Source: U.S. Department of Commerce Publications.

Section 402 provides for yearly congressional review of the emigration practices of any state receiving MFN status. The Soviets rejected this condition. There is no provision in the agreement dealing with emigration, but it is clear that art. XII, para. 2(b) and (c) provide a means for the United States to terminate the agreement if the Congress were to so direct.

⁶¹ Trade Agreement, *supra* note 1, art. XII.

⁶² USITC, *supra* note 4, at A10.

represented 61 percent of the United States imports from Romania in 1974.⁶³ The trade balance has been strongly pro-American with at least twice as many goods exported from the United States to Romania as are imported by the United States from Romania.⁶³ Even though the United States denied Romanian goods MFN treatment for many years, 75 percent of the value of 1974 imports from Romania entered the United States duty free or at nearly the same rate as MFN goods. Other items imported, such as work shoes,⁶⁴ have entered at high rates and still have been major trading items.⁶⁵

Romanian export potential is not governed solely by the size of United States duties. Political decisions restrict or encourage exports regardless of the world demand and tariffs. Only by diverting output from internal consumption or from other trade partners can an unplanned supply response to an export stimulus, such as MFN, be made. Although MFN status is a stimulus, the political ability and inclination of Romania to respond are usually the governing factors, rather than purely market factors.⁶⁶ The increased potential of United States imports is greatest in light industry areas where the largest decrease in duties has been seen. Furniture may be another area favorably affected.⁶⁷

⁶³ Petroleum and petroleum products were duty-free from May 1, 1973 until Feb. 1, 1975. As of Feb. 1, 1975 the duty has been reinstated, but the license holder receives a refund equivalent to the duty so that in effect all such products enter at the same duty irrespective of source. USITC, *supra* note 4 at A13.

⁶⁴ The favorable United States trade balance was US\$5.6 million in 1965 increasing to \$52.8 million in 1970 and to \$151.3 million in 1974. USITC, *supra* note 4, at A10. In 1973 Romania led all other non-market economies in the export of shoes to the United States. Its share of the American market was only 0.7 percent in 1973, but its share of the men's work shoe market was 35 percent of all work shoes imported by the United States at a value of US\$4.9 million for 1,110,000 pairs of shoes. In 1974 Romanian work shoes accounted for 42.8 percent in quantity and 36 percent in value of all imported work shoes. The value of Romanian shoes was \$11.4 million. Since column 2 rates are substantially higher than column 1, continued growth would be expected in this area except for certain statements by Arpimax during the USITC investigation of dumping charges in regard to work shoes. *See* note 49 *supra*.

⁶⁵ Other imports besides petroleum products which entered at low rates were canned pork, tractors and some chemicals. These low duty products accounted for half of the value of U.S. imports in 1970, for 60 percent in 1973 and 75 percent in 1974. Other products such as men's welt work shoes, *see* note 59, furniture, cheese, glassware, metal products, clothing, cotton textiles and some chemicals have entered in large quantities despite the high tariffs. In regard to textiles and clothing, quotas were established in 1970. In 1974 clothing imports to the United States dropped 13.7 percent, and the quota was not fulfilled. During 1973 and 1974 United States imports of clothing grew 7.8 percent worldwide in a softening market. It would seem Romanian clothing was at a competitive disadvantage due to the higher tariff. USITC, *supra* note 4, at A13.

⁶⁶ MFN cannot achieve the increase in trade intended because the plan describes how much will be imported. MFN has more political significance to Socialist countries because they prefer to deal with countries with which they have political agreements. Rohlik, *Trading with Socialist Partners*, 4 GA. J. INT'L & COMP. L. 362, 369-70 (1974). H.R. REP. No. 359, *supra* note 37, at 6; USITC, *supra* note 4, at A16.

⁶⁷ There is some evidence that furniture sales have been kept low by the high tariffs.

In the political arena MFN treatment has been used in an attempt to force a change in the internal policies of the communist world.⁶⁸ The question for the United States is not whether this is "legal or proper" under GATT⁶⁹ or general international law, but, as in most political questions, a question of whether this policy can be effective. The United States can trade with whom and under what conditions it pleases; theoretically other countries also have this choice. The Soviets rejected the Trade Act's implications, whereas the Romanians accepted them.⁷⁰ But in the words of Theodore Sorensen, "[the Jackson-Vanik] amendment attempts too much to be effective and too little to be meaningful."⁷¹ MFN treatment is much less important than the question of long term credits, and the emigration amendment failed to touch the question of the transfer of technology. Today MFN is basically political and recognized not as a special relationship but as a normal relationship. The effects of granting such treatment is therefore a 'normalization' of political and economic relations.⁷² The United States policy to encourage Romanian independence is furthered by the trade agreement in that Romania is able to stimulate its economic development and nationalism. In the final analysis, the most important effect of this agreement is probably not economic, but political. The agreement indicates to the rest of Eastern Europe that reconciliation can be accomplished. Should this agreement open the way to more East-West agreements, it will be the most important result.⁷³

Yugoslavia and Poland, both of which had MFN status, accounted for 8.2 percent of United States furniture imports in 1973, while Romanian sales amounted to only 0.4 percent of the total. Between 1970 and 1973 Romanian furniture exports grew 77.4 percent and United States furniture imports grew 74.0 percent, but United States imports from Romania grew only 33.5 percent to US\$1.5 million in 1973. In 1974, United States imports from Romania were \$1.7 million, but in the first quarter of 1975 these imports were down to an annual rate of \$1.0 million. All of the furniture products are eligible for GSP. See note 22 *supra*; USITC, *supra* note 4, at A39-A43.

⁶⁸ Sorensen, *Most-Favored-Nation and Less Favorite Nations*, 52 FOREIGN AFFAIRS 273-86 (1974).

⁶⁹ See note 20 *supra*.

⁷⁰ Frank, *supra* note 6.

⁷¹ Sorensen, *supra* note 64, at 273.

⁷² *Id.* at 276-77.

⁷³ Frank, *supra* note 6.

Thad. W. Simons, Jr.