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WITHDRAWAL SHEET

Ronald Reagan Library

Collection Name DOBRIANSKY, PAULA: FILES

Withdrawer

RBW 1/31/2017

File Folder ROMANIA - EE [EASTERN EUROPE] MFN [MOST
FAVORED NATION] (4)

FOIA

F1640/3

Box Number 6

HERSHBERG

69

ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
188961	LIST	RE. ADDRESSEES [PARTIAL] PAR 1/31/2017 F1640/3 #188961	1	ND	B3
188962	PAPER	[PG. 3 ONLY]	1	ND	B1 B3
188963	LETTER	NICOLAE CEAUSESCU TO RR	6	12/1/1982	B1
188964	LETTER	NICOLAE CEAUSESCU TO RR [IN ROMANIAN]	5	12/28/1982	B1
188965	MEMO	PAULA DOBRIANSKY TO WILLIAM CLARK RE. TERMINATION OF MFN FOR ROMANIA	2	2/23/1983	B1
188966	MEMO	CLARK TO RR RE. ROMANIA'S MFN STATUS	2	ND	B1

The above documents were not referred for declassification review at time of processing

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
- B-3 Release would violate a Federal statute [(b)(3) of the FOIA]
- B-4 Release would disclose trade secrets or confidential or financial information [(b)(4) of the FOIA]
- B-6 Release would constitute a clearly unwarranted invasion of personal privacy [(b)(6) of the FOIA]
- B-7 Release would disclose information compiled for law enforcement purposes [(b)(7) of the FOIA]
- B-8 Release would disclose information concerning the regulation of financial institutions [(b)(8) of the FOIA]
- B-9 Release would disclose geological or geophysical information concerning wells [(b)(9) of the FOIA]

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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
188967	MEMO	GEORGE SHULTZ TO RR RE. TERMINATION OF MFN FOR ROMANIA	2	2/19/1983	B1
188968	LETTER	RR TO CEAUSESCU [COPY OF DOC. 188910]	2	12/1/1982	B1
188969	MEMO	CLARK TO SHULTZ RE. TERMNIATION OF MFN FOR ROMANIA	2	ND	B1
188970	CABLE	BUCHAREST 1773	1	2/24/1983	B1
188971	MEMO	CLARK TO SHULTZ RE. TERMNIATION OF MFN FOR ROMANIA [COPY OF DOC. 188969]	1	3/1/1983	B1
188972	MEMO	CLARK TO RR RE. ROMANIA'S MFN STATUS [COPY OF DOC. 188966]	2	2/28/1983	B1
188973	MEMO	SHULTZ TO RR RE. TERMINATION OF MFN FOR ROMANIA [COPY OF DOC. 188967]	2	2/19/1983	B1

The above documents were not referred for declassification review at time of processing

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ID	Doc Type	Document Description	No of Pages	Doc Date	Restrictions
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188974	MEMO	PAULA DOBRIANSKY TO CLARK RE. TERMINATION OF MFN FOR ROMANIA [COPY OF DOC. 188965]	2	2/23/1983	B1
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188975	LETTER	RR TO CEAUSESCU [COPY OF DOC. 188910]	2	12/1/1982	B1
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The above documents were not referred for declassification review at time of processing

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Department of State

ACTION MEMORANDUM

S/S LRB

ROMANIA

8304435

MFN

EUR

FEB 1 1983

CONFIDENTIAL

TO: The Secretary

THROUGH: P - Under Secretary Eagleburger

FROM: EUR - Robert D. Blackwill, Acting

SUBJECT: Next Steps with Romania

ISSUE FOR DECISION

How to discontinue Most-Favored-Nation (MFN) tariff status and other benefits for Romania while preserving as constructive a bilateral relationship as possible in the wake of Romania's decision to move ahead in implementing its education repayment decree.

ESSENTIAL FACTORS

Romania has begun implementation of the education repayment decree, and Foreign Minister Andrei has told Ambassador Funderburk that the decision to do so is irrevocable. That means that it would be virtually impossible to continue Romania's MFN and other benefits, even should we wish to do so, and that our bilateral relations will enter a new, more difficult phase. It is in our interest, however, to retain as much of the relationship as possible without making unacceptable compromises. Andrei has expressed the GOR's desire to limit the inevitable damage which the loss of MFN will cause. How we handle the removal of MFN, including timing and how the issue is played in public, will have an important bearing on the immediate future of U.S.-Romanian relations. Our policy and public statements over the coming weeks should be designed to keep as many options open as possible and to avoid forcing the Romanians to move quickly toward greater economic reliance on the Soviets. While the situation is not an exact parallel, we should recall that the Soviets began implementation of such a tax and then ceased several months later. In any case, we should sustain our opposition to the tax and stated expectation that it be lifted at some point in the future.

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BY RW INFO DATE 11/31/17

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ANALYSIS OF OPTIONS

The first decision to be made is how and when to remove MFN. An analysis of the legal factors involved is appended as Tab A. We have at least three options: 1) The President may simply discontinue MFN at any time of his choosing; 2) the President may announce that he will withdraw MFN at some specific date in the future (but before July 2); or 3) the President could fail to recommend extension of MFN by June 2, which would mean that MFN would simply expire on July 2. Under all of these options it would be desirable for USTR to hold hearings for American firms engaged in trade with Romania and we would need to consult with the GOR pursuant to our bilateral Trade Agreement.

It would also be necessary to deal with the GATT aspect. When Romania joined GATT, we exercised our right under Article XXXV of the GATT not to apply the GATT between us and Romania. It therefore appears that there are no formal consultation or notification requirements; we are confirming this. However, we would certainly wish to discuss our impending action with appropriate GATT officials and Contracting Parties, preferably before the President's announcement. With the withdrawal of Romanian MFN coming hard on the heels of the Polish MFN withdrawal, it is important to avoid having the Romanian withdrawal complicate our GATT situation regarding Poland. A more deliberate withdrawal process would be helpful in that regard.

A second decision is required on what steps to take to salvage as much as possible of the bilateral relationship without giving the appearance of condoning the education repayment decree. Finally, a decision will be required on how to play the withdrawal of MFN and related issues in public. Under all three of the options above, we would and should make an early announcement which, at a minimum, would state that we are taking steps to discontinue the benefits of MFN to Romania.

DISCUSSION OF OPTIONS

A. Terminate the Jackson-Vanik Waiver Immediately

To withdraw Romania's MFN immediately would show U.S. firmness and decisiveness and would demonstrate to the GOR, the Congress and the general public our determination not to allow ourselves to be pushed around on the emigration issue. The

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- 3 -

main drawbacks of this course of action are that it would make relations with Romania more difficult than necessary, reduce our flexibility in dealing with the GOR, be damaging to U.S. firms doing business with Romania, and would allow little time either for the bilateral consultations with Romania required by our bilateral trade agreement or for discussions in the GATT framework. If this option is chosen, it would still be necessary for the President to decide whether to recommend by June 2 to the Congress that his waiver authority be extended for an additional year.

B. Announce MFN Withdrawal for a Future Date

Under this option, the President would announce his intention to terminate the current Jackson-Vanik waiver for Romania on a date some three months off (e.g. May 31). The President could then either let his waiver authority lapse automatically on July 2 or, as we propose, recommend to the Congress by June 2 that his waiver authority be extended for an additional year. He would not exercise that authority unless and until the implementation of the education tax decree is discontinued. (While we believe that the Jackson-Vanik amendment can be construed to allow this approach, the question is not entirely clear and we would have to consult carefully with the Congress before its implementation.)

If the President announces now the discontinuance of MFN at a specified future date, he will demonstrate firmness, maintain some degree of flexibility in dealing with the Romanians, give some time for adjustment to the many U.S. firms engaged in Romanian-U.S. trade, and allow sufficient time to complete the consultations required in our bilateral trade agreement with Romania and to have discussions in GATT. By setting a date for discontinuance some three months off, we would give Ceausescu an interval to contemplate the full consequences of his action and find a face-saving way to change his mind. We would also be acting fairly by giving U.S. firms a chance to find new suppliers and terminate contracts with the Romanians. The fact that specific presidential action had been taken and a date set for MFN termination should defuse Congressional criticism which would certainly follow if we adopted a policy of inaction. This option is designed to maximize leverage on the Romanians by keeping alive the prospect that MFN would be restored if they agree to stop implementing the decree and establish satisfactory emigration procedures.

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C. Allow the Jackson-Vanik waiver and waiver authority to
Expire July 2

The President could simply allow MFN to expire July 2 by announcing that he will not recommend renewal. This course of action would preserve the greatest flexibility for us and would be best received by the Romanians and the U.S. business community. However, it is a less decisive course of action than the previous option, would probably lead to Congressional and public criticism for inaction, and might lead the Romanians to think we were wavering in our intentions.

Steps to Salvage U.S.-Romanian Relations

It is in our interest, as well as Romania's, to preserve as much of our bilateral relationship as possible under the circumstances and to keep alive at least the slight possibility that the Romanians might change their mind on implementing the decree. To that end, it would be useful to go ahead, as planned, with an early visit at the Deputy Foreign Minister/Larry Eagleburger level. After that meeting, we can decide whether to invite Foreign Minister Andrei to come in late March/early April, as we had planned to do.

A decision also must be made on the EXIM credit to Romania for General Electric's participation in the Cernavoda nuclear power project, which technically would not be affected by the loss of MFN. The loan agreement on this \$120 million dollar sale of turbines was approved by President Reagan almost two years ago. The beginning of disbursement was suspended by the Eximbank when Romania stopped debt repayments early last year. The loan is consequently "grandfathered" and would not be legally prohibited by the ban on new government credits which accompanies the suspension of MFN pursuant to Jackson-Vanik. However, the Eximbank will have strong economic grounds for questioning the ability of the Romanians to service a loan of this magnitude once their trade with us has been greatly reduced by loss of MFN. A decision on how to proceed will require careful weighing of the legal and economic as well as the political factors. The Romanians are very much interested in proceeding with this project, in which the Canadians and Italians are major participants. It is the largest Western commercial project in Romanian history and we should not foreclose the possibility of our participation so long as it serves a role as the only remaining "carrot" to

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induce the Romanians to change their position on the emigration tax. One way to proceed is to have technical representatives from the Eximbank participate in the forthcoming site survey of the nuclear power project with the Canadians and Italians. The survey is tentatively scheduled for next month, and Eximbank participation would signal continuing interest in the project without making any specific commitment.

How we handle the GATT aspects and how we deal with our obligations under the U.S.-Romanian trade agreement (and to U.S. firms doing business with Romania) will need to be worked out in consultation with STR, the Department of Commerce, and other interested agencies. We will also wish to coordinate our actions with our allies and other interested countries (i.e., Israel) and recommend that prompt consultations be held with them once a decision has been made on how to proceed. We would also inform the IMF, IBRD and private banks of our stance and the reason for it. We will ask them and the Allies to bring whatever influence they have to bear on the Romanians to reverse their decision by pointing out to them the serious economic consequences for Romania's trade position and financial prospects of the impending loss of MFN.

Public Stance

Our public stance will be determined in part by which option is adopted for removing MFN and other benefits under Jackson-Vanik. In general, our stance in this area should be principled but low-key and designed not to drive the Romanians into a virulently defensive public posture on the decree issue. We should seek to leave the GOR a way to back down gracefully on implementation, despite the present unlikelihood that they would move away from implementation now that they have taken the plunge.

RECOMMENDATION:

That an interagency group be convened promptly to approve a recommendation to the President that he announce his intention to terminate the Jackson-Vanik waiver for Romania effective May 31, 1983, if the education tax decree remains in force as of that date, but to seek continuation of his waiver authority for an additional year beginning July 2.

APPROVE _____ DISAPPROVE _____

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- 6 -

WHL
Drafter: EUR/EEY:JBBickert
2/14/83 Ext.23298 No. 2250A
Clear : EUR/EEY:JRDavis *[initials]*
EUR:RMPalmer *[initials]*
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EB/OT/TA:TSchaffer *[initials]*
HA:EAbams *[initials]*
USDOC:FVargor (subs)
USTR:WTriplet *[initials]* (subs)
S/P:SSestanovich *[initials]*
Eximbank:JFleig (subs)
EUR:TMTNiles
EB/EWT:RDugstad *[initials]*

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LEGAL CONSIDERATIONS

Section 402 of the Trade Act of 1974 (the "Jackson-Vanik amendment") provides that any nonmarket country that, inter alia, "imposes more than a nominal tax on emigration or the visas or other documents required for emigration, for any purpose or cause whatsoever", is ineligible for most-favored-nation trade status (MFN) and for participation in USG credit, or credit or investment guarantee programs. The President may waive this prohibition if he finds that to do so will "substantially promote" the objectives of section 402 and if he has received assurances that the emigration practices of the country concerned will "henceforth lead substantially" to the achievement of those objectives and so reports to the Congress (the "Jackson-Vanik waiver"). This was done for Romania in 1975.

In order to maintain the waiver in force, the President must determine each year that its continuation will "substantially promote" the objectives of section 402, and recommend to the Congress that his waiver authority be continued, not less than 30 days prior to the expiration of that authority. (Maintenance of the waiver for Romania would therefore require such action on or before June 2.) Either House may thereafter terminate the waiver authority by adopting a resolution of disapproval within 60 days following the expiration of the previous extension.

The President's options for terminating MFN and related benefits for Romania under the Jackson-Vanik amendment may be summarized as follows:

First, the President may "terminate" the waiver "at any time" by Executive order under section 402(c)(3). The President is not obliged by law to take such action. If he does not, the current waiver for Romania will remain in effect until July 2.

Second, the President may decline to recommend extension of his waiver authority. If he does not so recommend on or before June 2, his waiver authority -- and the waiver -- will expire automatically on July 2. (If the President does recommend extension, either House of the Congress may disapprove that recommendation by resolution adopted on or before September 2, in which case the waiver and the waiver authority would terminate on the date of such resolution's adoption. The Congress may not terminate the waiver, or otherwise deny MFN to Romania, prior to July 2 by any means short of new legislation.)

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Third, the Jackson-Vanik amendment can be read to permit the President both to terminate the current waiver under section 402(c)(3) and to recommend to the Congress on or before June 2 that his waiver authority with respect to Romania be extended for an additional year beginning July 2. Assuming that the Congress did not act to disapprove the extension of the President's waiver authority, Romanian eligibility for MFN and other benefits under the Jackson-Vanik amendment could thereafter be reinstated by a new determination and report to the Congress that the waiver of the prohibitions of the amendment will "substantially promote" the objectives of the amendment and that he has received assurances that Romania's emigration practices will "henceforth lead substantially" to the achievement of those objectives.

While a strong argument can be made that the President may terminate the Jackson-Vanik waiver under section 402(c)(3) and thereafter restore Romania's eligibility for MFN and other benefits by means of a new waiver so long as the current waiver authority remains in effect, it is less clear that the President may recommend the extension of his waiver authority for any country with respect to which a Jackson-Vanik waiver is not currently in force. Thus, the foregoing option would require a novel construction of the statute. Under such circumstances, careful congressional consultations prior to implementation would be advisable.

It should be noted that the Jackson-Vanik amendment provided for the grant of waiver authority only within 18 months after enactment. Thus, should the President decide to terminate the waiver without seeking extension of the waiver authority (or should the Congress disapprove extension of such authority by the adoption by either House of the Congress of a resolution of disapproval), restoration of Romania's eligibility for MFN and other benefits, and the conclusion of a new trade agreement, would require either (1) an Act of Congress, or (2) a report by the President to the Congress under section 402(b) that Romania is in compliance with the emigration practice standards set forth in section 402(a). Continued implementation of the education tax decree would preclude such a report.

Our 1975 Trade Agreement with Romania contemplates suspension or termination of the Agreement, if either party is unable to carry out any of its obligations thereunder. Prior consultations with the Romanians "with a view to finding a solution" that would make such suspension or termination unnecessary would be required. If we wished to suspend or terminate only part of the Agreement, Romanian concurrence would be required.

Drafted:L/EUR:TABorek *TAB*
2/14/83:x24110

Clearance:L:EGVerville *STAB*
L/EB:MBWest *STAB*



DEPARTMENT OF STATE

Washington, D.C. 20520

MEMORANDUM

February 15, 1983

TO: See attached list

FROM: EUR/EEY - Robert W. Smith

SUBJECT: Meeting on Next Steps with Romania
4:00 P.M. - Tuesday, February 15,
EUR Conference Room (6226 NS)

Attached is paper for discussion at the 4:00 P.M.
meeting today.

Attachment:

As stated.

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Addressees:

STATE

L - Ms. EGVerville
L/EUR:TABorek
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EB/EWT:RDugstad
EUR:TMTNiles

CIA

STAT

EXIM

Mr. Joseph Fleig

TREASURY

Mr. Allen E. Clapp

COMMERCE

Mr. Edgar Fulton

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BY RW DATE 1/31/17



Department of State

ACTION MEMORANDUM

S/S

12

CONFIDENTIAL

TO: The Secretary

THROUGH: P - Under Secretary Eagleburger

FROM: EUR - Robert D. Blackwill, Acting

SUBJECT: Next Steps with Romania

ISSUE FOR DECISION

How to discontinue Most-Favored-Nation (MFN) tariff status and other benefits for Romania while preserving as constructive a bilateral relationship as possible in the wake of Romania's decision to move ahead in implementing its education repayment decree.

ESSENTIAL FACTORS

Romania has begun implementation of the education repayment decree, and Foreign Minister Andrei has told Ambassador Funderburk that the decision to do so is irrevocable. That means that it would be virtually impossible to continue Romania's MFN and other benefits, even should we wish to do so, and that our bilateral relations will enter a new, more difficult phase. It is in our interest, however, to retain as much of the relationship as possible without making unacceptable compromises. Andrei has expressed the GOR's desire to limit the inevitable damage which the loss of MFN will cause. How we handle the removal of MFN, including timing and how the issue is played in public, will have an important bearing on the immediate future of U.S.-Romanian relations. Our policy and public statements over the coming weeks should be designed to keep as many options open as possible and to avoid forcing the Romanians to move quickly toward greater economic reliance on the Soviets. While the situation is not an exact parallel, we should recall that the Soviets began implementation of such a tax and then ceased several months later. In any case, we should sustain our opposition to the tax and stated expectation that it be lifted at some point in the future.

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BY RW NARA DATE 1/31/17

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- 2 -

ANALYSIS OF OPTIONS

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It would also be necessary to deal with the GATT aspect. When Romania joined GATT, we exercised our right under Article XXXV of the GATT not to apply the GATT between us and Romania. It therefore appears that there are no formal consultation or notification requirements; we are confirming this. However, we would certainly wish to discuss our impending action with appropriate GATT officials and Contracting Parties, preferably before the President's announcement. With the withdrawal of Romanian MFN coming hard on the heels of the Polish MFN withdrawal, it is important to avoid having the Romanian withdrawal complicate our GATT situation regarding Poland. A more deliberate withdrawal process would be helpful in that regard.

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DISCUSSION OF OPTIONS

A. Terminate the Jackson-Vanik Waiver Immediately

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- 3 -

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main drawbacks of this course of action are that it would make relations with Romania more difficult than necessary, reduce our flexibility in dealing with the GOR, be damaging to U.S. firms doing business with Romania, and would allow little time either for the bilateral consultations with Romania required by our bilateral trade agreement or for discussions in the GATT framework. If this option is chosen, it would still be necessary for the President to decide whether to recommend by June 2 to the Congress that his waiver authority be extended for an additional year.

B. Announce MFN Withdrawal for a Future Date

Under this option, the President would announce his intention to terminate the current Jackson-Vanik waiver for Romania on a date some three months off (e.g. May 31). The President could then either let his waiver authority lapse automatically on July 2 or, as we propose, recommend to the Congress by June 2 that his waiver authority be extended for an additional year. He would not exercise that authority unless and until the implementation of the education tax decree is discontinued. (While we believe that the Jackson-Vanik amendment can be construed to allow this approach, the question is not entirely clear and we would have to consult carefully with the Congress before its implementation.)

If the President announces now the discontinuance of MFN at a specified future date, he will demonstrate firmness, maintain some degree of flexibility in dealing with the Romanians, give some time for adjustment to the many U.S. firms engaged in Romanian-U.S. trade, and allow sufficient time to complete the consultations required in our bilateral trade agreement with Romania and to have discussions in GATT. By setting a date for discontinuance some three months off, we would give Ceausescu an interval to contemplate the full consequences of his action and find a face-saving way to change his mind. We would also be acting fairly by giving U.S. firms a chance to find new suppliers and terminate contracts with the Romanians. The fact that specific presidential action had been taken and a date set for MFN termination should defuse Congressional criticism which would certainly follow if we adopted a policy of inaction. This option is designed to maximize leverage on the Romanians by keeping alive the prospect that MFN would be restored if they agree to stop implementing the decree and establish satisfactory emigration procedures.

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- 4 -

C. Allow the Jackson-Vanik waiver and waiver authority to
Expire July 2

The President could simply allow MFN to expire July 2 by announcing that he will not recommend renewal. This course of action would preserve the greatest flexibility for us and would be best received by the Romanians and the U.S. business community. However, it is a less decisive course of action than the previous option, would probably lead to Congressional and public criticism for inaction, and might lead the Romanians to think we were wavering in our intentions.

Steps to Salvage U.S.-Romanian Relations

It is in our interest, as well as Romania's, to preserve as much of our bilateral relationship as possible under the circumstances and to keep alive at least the slight possibility that the Romanians might change their mind on implementing the decree. To that end, it would be useful to go ahead, as planned, with an early visit at the Deputy Foreign Minister/Larry Eagleburger level. After that meeting, we can decide whether to invite Foreign Minister Andrei to come in late March/early April, as we had planned to do.

A decision also must be made on the EXIM credit to Romania for General Electric's participation in the Cernavoda nuclear power project, which technically would not be affected by the loss of MFN. The loan agreement on this \$120 million dollar sale of turbines was approved by President Reagan almost two years ago. The beginning of disbursement was suspended by the Eximbank when Romania stopped debt repayments early last year. The loan is consequently "grandfathered" and would not be legally prohibited by the ban on new government credits which accompanies the suspension of MFN pursuant to Jackson-Vanik. However, the Eximbank will have strong economic grounds for questioning the ability of the Romanians to service a loan of this magnitude once their trade with us has been greatly reduced by loss of MFN. A decision on how to proceed will require careful weighing of the legal and economic as well as the political factors. The Romanians are very much interested in proceeding with this project, in which the Canadians and Italians are major participants. It is the largest Western commercial project in Romanian history and we should not foreclose the possibility of our participation so long as it serves a role as the only remaining "carrot" to

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induce the Romanians to change their position on the emigration tax. One way to proceed is to have technical representatives from the Eximbank participate in the forthcoming site survey of the nuclear power project with the Canadians and Italians. The survey is tentatively scheduled for next month, and Eximbank participation would signal continuing interest in the project without making any specific commitment.

How we handle the GATT aspects and how we deal with our obligations under the U.S.-Romanian trade agreement (and to U.S. firms doing business with Romania) will need to be worked out in consultation with STR, the Department of Commerce, and other interested agencies. We will also wish to coordinate our actions with our allies and other interested countries (i.e., Israel) and recommend that prompt consultations be held with them once a decision has been made on how to proceed. We would also inform the IMF, IBRD and private banks of our stance and the reason for it. We will ask them and the Allies to bring whatever influence they have to bear on the Romanians to reverse their decision by pointing out to them the serious economic consequences for Romania's trade position and financial prospects of the impending loss of MFN.

Public Stance

Our public stance will be determined in part by which option is adopted for removing MFN and other benefits under Jackson-Vanik. In general, our stance in this area should be principled but low-key and designed not to drive the Romanians into a virulently defensive public posture on the decree issue. We should seek to leave the GOR a way to back down gracefully on implementation, despite the present unlikelihood that they would move away from implementation now that they have taken the plunge.

RECOMMENDATION:

That an interagency group be convened promptly to approve a recommendation to the President that he announce his intention to terminate the Jackson-Vanik waiver for Romania effective May 31, 1983, if the education tax decree remains in force as of that date, but to seek continuation of his waiver authority for an additional year beginning July 2.

APPROVE _____

DISAPPROVE _____

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- 6 -

WHL
Drafter: EUR/EEY:JB Gickert
2/14/83 Ext. 23298 No. 2250A
Clear : EUR/EEY:JRDavis
EUR:RMPalmer
L:EGVerville (draft)
EB/OT/TA:TSchaffer
HA:EAbams
USDOC:FVargor (subs)
USTR:WTriplet (subs)
S/P:SSestanovich
Eximbank:JFleig (subs)
EUR:TMTNiles
EB/EWT:RDugstad

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LEGAL CONSIDERATIONS

Section 402 of the Trade Act of 1974 (the "Jackson-Vanik amendment") provides that any nonmarket country that, inter alia, "imposes more than a nominal tax on emigration or the visas or other documents required for emigration, for any purpose or cause whatsoever", is ineligible for most-favored-nation trade status (MFN) and for participation in USG credit, or credit or investment guarantee programs. The President may waive this prohibition if he finds that to do so will "substantially promote" the objectives of section 402 and if he has received assurances that the emigration practices of the country concerned will "henceforth lead substantially" to the achievement of those objectives and so reports to the Congress (the "Jackson-Vanik waiver"). This was done for Romania in 1975.

In order to maintain the waiver in force, the President must determine each year that its continuation will "substantially promote" the objectives of section 402, and recommend to the Congress that his waiver authority be continued, not less than 30 days prior to the expiration of that authority. (Maintenance of the waiver for Romania would therefore require such action on or before June 2.) Either House may thereafter terminate the waiver authority by adopting a resolution of disapproval within 60 days following the expiration of the previous extension.

The President's options for terminating MFN and related benefits for Romania under the Jackson-Vanik amendment may be summarized as follows:

First, the President may "terminate" the waiver "at any time" by Executive order under section 402(c)(3). The President is not obliged by law to take such action. If he does not, the current waiver for Romania will remain in effect until July 2.

Second, the President may decline to recommend extension of his waiver authority. If he does not so recommend on or before June 2, his waiver authority -- and the waiver -- will expire automatically on July 2. (If the President does recommend extension, either House of the Congress may disapprove that recommendation by resolution adopted on or before September 2, in which case the waiver and the waiver authority would terminate on the date of such resolution's adoption. The Congress may not terminate the waiver, or otherwise deny MFN to Romania, prior to July 2 by any means short of new legislation.)

Third, the Jackson-Vanik amendment can be read to permit the President both to terminate the current waiver under section 402(c)(3) and to recommend to the Congress on or before June 2 that his waiver authority with respect to Romania be extended for an additional year beginning July 2. Assuming that the Congress did not act to disapprove the extension of the President's waiver authority, Romanian eligibility for MFN and other benefits under the Jackson-Vanik amendment could thereafter be reinstated by a new determination and report to the Congress that the waiver of the prohibitions of the amendment will "substantially promote" the objectives of the amendment and that he has received assurances that Romania's emigration practices will "henceforth lead substantially" to the achievement of those objectives.

While a strong argument can be made that the President may terminate the Jackson-Vanik waiver under section 402(c)(3) and thereafter restore Romania's eligibility for MFN and other benefits by means of a new waiver so long as the current waiver authority remains in effect, it is less clear that the President may recommend the extension of his waiver authority for any country with respect to which a Jackson-Vanik waiver is not currently in force. Thus, the foregoing option would require a novel construction of the statute. Under such circumstances, careful congressional consultations prior to implementation would be advisable.

It should be noted that the Jackson-Vanik amendment provided for the grant of waiver authority only within 18 months after enactment. Thus, should the President decide to terminate the waiver without seeking extension of the waiver authority (or should the Congress disapprove extension of such authority by the adoption by either House of the Congress of a resolution of disapproval), restoration of Romania's eligibility for MFN and other benefits, and the conclusion of a new trade agreement, would require either (1) an Act of Congress, or (2) a report by the President to the Congress under section 402(b) that Romania is in compliance with the emigration practice standards set forth in section 402(a). Continued implementation of the education tax decree would preclude such a report.

Our 1975 Trade Agreement with Romania contemplates suspension or termination of the Agreement, if either party is unable to carry out any of its obligations thereunder. Prior consultations with the Romanians "with a view to finding a solution" that would make such suspension or termination unnecessary would be required. If we wished to suspend or terminate only part of the Agreement, Romanian concurrence would be required.

Drafted:L/EUR:TABorek *TAB*
2/14/83:x24110

Clearance:L:EGVerville *STAB*
L/EB:MBWest *STAB*

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188962	PAPER [PG. 3 ONLY]	1	ND	B1 B3

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

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NSC/S PROFILE

RW
1/31/17 ~~CONFIDENTIAL~~

FILE ROMANIA
ID 8301119
MFN

RECEIVED 17 FEB 83 12

TO PRESIDENT

FROM CEAUSESCU, NICOLAE

DOCDATE 00 DEC 82

BREMER

17 FEB 83

KEYWORDS: ROMANIA

EMIGRATION

INTL TRADE

MFN

HS

SUBJECT: CEAUSESCU RESPONSE TO PRES DEC 1 LTR RE US - ROMANIAN BILATERAL
RELATIONS

ACTION: FOR RECORD PURPOSES

DUE:

STATUS C

FILES PA

FOR ACTION

FOR CONCURRENCE

FOR INFO

DOBRIANSKY

ROBINSON

MYER

NAU

GUHIN

WHEELER

MCMINN

BAILEY

MARTIN

COMMENTS

REF#

8303327

LOG 8208143

NSCIFID

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ACTION OFFICER (S)

ASSIGNED

ACTION REQUIRED

DUE

COPIES TO

DISPATCH

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(CLASSIFICATION)

DECLASSIFIED
State Guidelines, July 10
NARA, DATE 11/31/17

DEPARTMENT OF STATE
EXECUTIVE SECRETARIAT
TRANSMITTAL FORM

S/S 8303327

Date February 17, 1983

For: Mr. William P. Clark
National Security Council
The White House

Reference:

TO: President Reagan From: President Ceausescu
Date: December 1982 Subject US-Romanian bilateral
relations

WH Referral Dated: N/A NSC ID #
(if any)

xx The attached item was sent directly to the
Department of State.

Action Taken:

 A draft reply is attached.
 A draft reply will be forwarded.
 A translation is attached.
 An information copy of a direct reply is attached.
xx We believe no response is necessary for the reason
cited below.
 The Department of State has no objection to the
proposed travel.
 Other.

Remarks.

The attached original letter from President Ceausescu to President Reagan was handed to Under Secretary Eagleburger by Romanian Ambassador Malitza. It was sent in response to the President's letter of December 1, 1982, to President Ceausescu. Since Under Secretary Eagleburger went to Romania in January as Presidential Envoy and discussed the subject matter of both letters with President Ceausescu at that time, we do not consider that a response to President Ceausescu's letter is necessary.

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(Classification)
OADR

John W. Bremer
L. Paul Bremer, III
Executive Secretary

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188963	LETTER NICOLAE CEAUSESCU TO RR	6	12/1/1982	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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188964	LETTER NICOLAE CEAUSESCU TO RR [IN ROMANIAN]	5	12/28/1982	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

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188965	MEMO PAULA DOBRIANSKY TO WILLIAM CLARK RE. TERMINATION OF MFN FOR ROMANIA	2	2/23/1983	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]

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188966	MEMO CLARK TO RR RE. ROMANIA'S MFN STATUS	2	ND	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
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(p. 4)

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PROPOSED TEXT

PRESIDENTIAL ANNOUNCEMENT

The Government of Romania has ~~informed us officially that~~
~~it has~~ implemented a decree requiring any Romanian citizen
wishing to emigrate to repay in convertible currency the costs
of education received beyond the compulsory level. This decree
conflicts with the letter and spirit of Section 402 of the Trade
Act of 1974, which is intended to ~~help~~ remove barriers to
freedom of emigration. I, therefore, declare my intention to
terminate Romania's Most-Favored-Nation tariff status and other
benefits effective June 30, 1983, if the education repayment
decree remains in force on that date. ~~It is my hope that the~~
~~Romanian Government may reconsider its decision on this matter,~~
~~thereby making it unnecessary for me to take the action of~~
~~discontinuing Most-Favored Nation treatment and other benefits~~
~~with its consequences for bilateral trade and economic relations~~
~~between our two countries.~~

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DECLASSIFIED
Authority NSC Waiver 8/6/10
BY RW NARA DATE 1/31/17

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188967	MEMO GEORGE SHULTZ TO RR RE. TERMINATION OF MFN FOR ROMANIA	2	2/19/1983	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

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188968	LETTER RR TO CEAUSESCU [COPY OF DOC. 188910]	2	12/1/1982	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
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188969	MEMO CLARK TO SHULTZ RE. TERMINATION OF MFN FOR ROMANIA	2	ND	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

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188970	CABLE BUCHAREST 1773	1	2/24/1983	E1

Freedom of Information Act - [5 U.S.C. 552(b)]

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~~CONFIDENTIAL~~ESSENTIAL FACTORS

Under Secretary Eagleburger's January 10-11 trip to Romania helped ensure that President Ceausescu is under no illusions that Romania can retain MFN and associated benefits if it implements the education repayment decree of November 6, 1982. At the same time, the Romanians did not show flexibility in their position on the decree during the Eagleburger visit, and on January 24 our Embassy in Bucharest learned for the first time of a case in which an emigrant apparently is being asked to repay the state for the cost of her education. It is not clear yet whether this is an isolated case or means that full implementation is under way. Deputy Assistant Secretary Mark Palmer called in the Romanian Chargé on January 24 to request urgent clarification and to reiterate that MFN will be removed if implementation of the decree proceeds.

SUGGESTED GAMEPLAN

If the Romanians do proceed with implementation of the decree, the only questions will be when and precisely how to take away MFN. We could act to suspend MFN as soon as full implementation became clear or we could wait and terminate it on June 2nd when the President's annual recommendation to the Congress on the future of MFN is due. The questions of timing and manner can be decided later and should be designed to encourage the Romanians to revert to the status quo ante.

However, if implementation does not now proceed, we need to determine how best to use the next few months. It is in our interest to preserve and maintain our relations with Romania at their present level if this can be done without a "deal" to pay for emigrants. We must continue to be absolutely explicit with the Romanians -- the U.S. cannot and will not make any Israeli or German-type arrangement. And we should recognize the need

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Authority: State Waiver 11/6/15
BY: RW NARA DATE 1/31/17

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- 2 -

to begin thinking how to manage a post-MFN relationship. At the same time, we must look for ways to convince the Romanians that it will be more to their advantage not to implement the decree than to do so. MFN is central to our present relationship -- economically, politically, and psychologically -- and its loss would be a serious blow. It also would lead to reduced emigration. Therefore, if there is no immediate implementation, we suggest the following gameplan:

1. January 25: An interagency meeting took place to examine where we stand in our relations with Romania and to explore ways to encourage the Romanians to improve their emigration/human rights performance and persuade them not to implement the education tax decree. We are developing a set of positive and negative inducements, i.e., a trade promotion program, LANDSTAT ground station, linking EXIM credits for their nuclear power plant to non-implementation of the decree, annual bilateral talks on global issues, etc. Much of this would be simply showing movement on prior commitments but doing so in the next few months.

2. Early February: Deputy Foreign Minister Groza should be invited by Larry Eagleburger to visit Washington for a general review of relations with him and for the second stage of discussions to reach agreement on improved emigration procedures with Elliott Abrams and Rick Burt, as suggested in the President's letter to Ceausescu of December 1. Improvement in emigration procedures is one of two preconditions to a Presidential recommendation to extend MFN and to overcoming Congressional opposition to continuing MFN. (N.B.: One major Congressional concern, i.e., speeding up the processing of emigration cases, is particularly tricky and potentially embarrassing, since we currently are unable to take in all the people the Romanians have approved for departure to the U.S. Because of limitations on our refugee numbers, there are now over 1,000 people with exit passports in hand whom we cannot assist to depart Romania. We are helping about 100 refugees to leave each month, while the Romanians are approving about 200 passports for travel to the U.S. per month. Thus the backlog grows.)

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~~CONFIDENTIAL~~

- 3 -

3. Early February: A Canadian/Italian/U.S. technical mission is tentatively scheduled to visit Romania for an on-site inspection and evaluation of the proposed Cernavoda nuclear power plant. EXIM has committed but not disbursed \$120 million to General Electric for its share of the project. U.S. participation in this tripartite visit, which EXIM currently is resisting, would demonstrate our continuing interest in the project without obligating us to any specific course of action. We need to make clear to the Romanians that this deal will only go through if they do not implement the decree and continue to meet their economic obligations, i.e., debt rescheduling.

4. Late March/Early April: During Larry Eagleburger's visit to Bucharest the Romanians proposed that Foreign Minister Andrei visit Washington to continue the discussions. Assuming that they do not implement the decree before then, we should go ahead with this visit and use it to expose Andrei further to Administration and Congressional thinking on the decree and related issues. We should try to obtain a firm commitment from Andrei that the decree will not be implemented.

5. April and May: If the decree has not been implemented and we have reached agreement on improvements in emigration procedures, the Administration will need to lobby with Congress to ensure the continuation of MFN. It is possible the Romanians will be unwilling to give us an explicit commitment not to implement the decree. In this case we would need to tell them and the Congress that we would take away MFN if they do proceed to implement the decree after MFN is extended for one more year. With MFN extended and if our economy improves and Romanian exports to us expand, we will retain a powerful lever for influencing Romanian policy. However, without MFN we would lose much of our capacity to influence Romania and ease considerably the Soviet problem of bringing a recalcitrant Ceausescu back into line with other, more orthodox Warsaw Pact leaders. We also would see a downturn in emigration.

6. Early Summer: There is a possibility that the Vice President might include Romania in a more general visit to Eastern Europe. We need to think how such a visit could be fit into our strategy of penalties and rewards.

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Additional steps to be taken will emerge from the interagency consultation process and as events unfold. While we may succeed in avoiding implementation of the decree, in the end we may fail and have to take away MFN. There inevitably would be much fingerpointing if this occurred, and both emigration and U.S.-Romanian relations would take a sharp drop. But we will be better positioned vis-a-vis the Romanians, Congress and those interested in emigration if we have made a maximum effort over the next few months.

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188971	MEMO CLARK TO SHULTZ RE. TERMINATION OF MFN FOR ROMANIA [COPY OF DOC. 188969]	1	3/1/1983	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
- B-2 Release would disclose internal personnel rules and practices of an agency [(b)(2) of the FOIA]
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188972	MEMO CLARK TO RR RE. ROMANIA'S MFN STATUS [COPY OF DOC. 188966]	2	2/28/1983	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

B-1 National security classified information [(b)(1) of the FOIA]

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PROPOSED TEXT

PRESIDENTIAL ANNOUNCEMENT

The Government of Romania has informed us officially that it has implemented a decree requiring any Romanian citizen wishing to emigrate to repay in convertible currency the costs of education received beyond the compulsory level. This decree conflicts with the letter and spirit of Section 402 of the Trade Act of 1974, which is intended to help remove barriers to freedom of emigration. I, therefore, declare my intention to terminate Romania's Most-Favored-Nation tariff status and other benefits effective June 30, 1983, if the education repayment decree remains in force on that date. It is my hope that the Romanian Government may reconsider its decision on this matter, thereby making it unnecessary for me to take the action of discontinuing Most-Favored Nation treatment and other benefits with its consequences for bilateral trade and economic relations between our two countries.

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Authority NSC Waiver 8/12/10
BY RW DATE 1/31/17

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FROM/LOCATION/

1. RADM POINDEXTER/SANTA BARBARA

TO/LOCATION/TIME OF RECEIPT

1. FLO GANTT/SITRM WASH D.C. / REC 2:35 PM PST
1 MAR 83

INFORMATION ADDRESSEES/LOCATION/TIME OF RECEIPT

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188973	MEMO SHULTZ TO RR RE. TERMINATION OF MFN FOR ROMANIA [COPY OF DOC. 188967]	2	2/19/1983	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
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188974	MEMO PAULA DOBRIANSKY TO CLARK RE. TERMINATION OF MFN FOR ROMANIA [COPY OF DOC. 188965]	2	2/23/1983	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

- B-1 National security classified information [(b)(1) of the FOIA]
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188975	LETTER RR TO CEAUSESCU [COPY OF DOC. 188910]	2	12/1/1982	B1

Freedom of Information Act - [5 U.S.C. 552(b)]

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