

NATIONAL FOREIGN TRADE COUNCIL, INC.

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June 15, 2012

The Honorable John Kerry
Chairman U.S. Senate Committee on Foreign Relations
218 Russell Senate Office Building
Washington, DC 20510-2102

Dear Senator Kerry:

I am writing on behalf of the National Foreign Trade Council, an association of some 250 U.S. companies engaged in international trade and investment, many of whom have current and prospective business interest in Russia. The NFTC, and its affiliate, USA*Engage, strongly support Permanent Normal Trade Relations (PNTR) for Russia, but we have serious concerns about S. 1039, the “Sergei Magnitsky Rule of Law Accountability Act.”

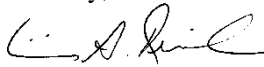
We understand that on June 19 the Senate Foreign Relations Committee will mark up S. 1039. While we share the indignation over the murder of Mr. Magnitsky, we believe that the bill as it has been publicly discussed, is seriously flawed:

- The bill mandates the Secretaries of State and Treasury to compose a list of persons responsible for gross violations of human rights carried out by persons anywhere in the world who would be denied visas to enter the U.S. and have their U.S. assets frozen. It is noteworthy that the House Foreign Affairs Committee action restricts the scope of the bill to Russia only, which retains an arguable nexus, rather than universal application.
- The bill does not establish a process to determine what constitutes responsibility or to define “gross human rights violations,” creating great uncertainty for implementation.
- The bill authorizes the chair and ranking members of ten House and Senate committees to propose persons to be included on the list. The Secretary of State is then required to decide on their inclusion and to submit a response to Congress explaining action or inaction. This provision invites politicization of the process.
- The bill’s definition of “person” includes both natural persons and entities, which would include subsidiaries of foreign companies incorporated in the U.S. whose parent’s conduct anywhere in the world could cause them to be sanctioned based on an opaque and unspecified process.
- The bill requires that a person remain on the list until “until the person demonstrates that the person did not engage in the activity for which the person was added to the list.” In other words designated persons are deemed guilty of human rights abuses, undefined in the bill, and remain listed until proven innocent by means undefined in the bill, the reverse of commitments undertaken by the world community in the Universal Declaration of Human Rights.

- The bill requires the Secretaries of State and Treasury also to list persons who “acted as an agent of or on behalf of a person in ...violations of internationally recognized human rights.” This extends the denial of visas and freezing of U.S. assets to the “agents” of listed person. The term agent is undefined and could be interpreted broadly to cover a wide range of relationships, including joint venture partners, licensees, customers and suppliers.
- The bill would require U.S. financial and non-financial entities and their subsidiaries to conduct a “negative audit” to determine that they do not hold any U.S. property assets of a listed violator or of unidentified, non-listed persons or other entities which are deemed to be agents of the violator. The ambiguity about who is covered could make implementation difficult and costly and cause major complications in banks’ correspondent relationships.

The NFTC and USA*Engage share the desire of Members of Congress that the United States take a clear position on human rights violations in Russia and anywhere else in the world. We urge Congress in its consideration of this legislation to limit its scope to measures already taken by the Executive Branch to deny visas to Russian persons with a direct involvement in the death of Sergei Magnitsky and support its authority to do so anywhere else.

Sincerely,



William A. Reinsch
President