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September 19, 2008

Senator Carl Levin
269 Russell Senate Office Building
United States Senate
Washington, DC 20510

**Re: Iran sanctions amendments to S.3001: SA 5485 and SA 5577**

Dear Senator Levin:

We agree that preventing Iran from developing the capability to produce nuclear weapons is a very important U.S. national security objective, but, as we indicated with respect to Senate Amendments 5485 and 5577 that were being considered to the National Defense Authorization Act (S.3001), these amendments will undermine rather than promote this critical objective. **We urge you to ensure that they are not included in the conference report to the bill.** Such action would, almost certainly, provoke a veto as the White House has indicated.

With respect to the merits, first, the extraterritorial extension of sanctions would over-ride and preempt provisions of 17 Executive Orders issued over a 28 year period that provided the legal authority for current sanctions. Second, as explained more fully below, extraterritorial extension of sanctions will reignite economic, diplomatic and legal conflicts with our allies that will frustrate rather than promote multilateral action against Iran.

Among other troubling provisions, both SA 5485 and SA 5577 would open the door to expanding the existing unilateral U.S. prohibitions on trade and investment with Iran by U.S. persons and entities by making a parent company liable for the actions of its subsidiaries that are domiciled in foreign countries. This weakens a fundamental principle of U.S law, by "piercing the corporate veil," and could have far-reaching negative consequences going well beyond the issue of Iran.

The history of similar efforts demonstrates clearly that such a unilateral effort will provoke a negative response from our allies that will divert attention from developing an effective economic and diplomatic multilateral response to Iran:

- During the Soviet invasion of Afghanistan in the early 1980s, the U.S. sought to ban participation in the Siberian pipeline project by European subsidiaries of U.S. companies.

- In response to the U.S. sanctions on the pipeline project, the U.K., France, the Netherlands, and other countries passed blocking statutes, requiring the subsidiaries to honor existing contracts and disobey the U.S. sanctions, thereby putting the subsidiaries and their parents in the impossible position of not being able to obey both U.S. and applicable foreign law at the same time.

- Under considerable pressure from EU governments and American corporations, the Reagan Administration withdrew the extraterritorial measures to avert adverse rulings in multiple pending legal cases in both U.S. and overseas courts. Beginning with the regulations implementing sanctions on Libya in 1986, the United States has repeatedly recognized that extraterritorial sanctions will not work.

The United States and its allies are making progress in assembling broad, multi-national economic and diplomatic action against Iran. Enacting either SA 5485 or SA 5577 and thereby potentially imposing stringent U.S. penalties on entities in the same countries that are assisting us would only undercut the progress that our diplomats are making. At worst, these other governments could use existing or new blocking statutes and other measures to counteract the threat of U.S. penalties.

In targeting our allies for penalties, these bills would draw international attention away from the core problem: Iran's threatening behavior in seeking nuclear weapons. As then Undersecretary of State for Political Affairs Nicholas Burns noted in testimony before the Senate Foreign Relations Committee, the administration "could not support... modifications to this act now being circulated in Congress that would turn the full weight of sanctions not against Iran but against our allies that are instrumental in our coalition against Iran." It is counterproductive to penalize entities and individuals in the very countries whose cooperation we need to effectively counteract Iran's dangerous behavior.

In addition, Section 1252 of SA 5485 would make the United States more vulnerable to international commercial complaints and damage U.S. global financial leadership by greatly expanding the universe of entities subject to sanctions to include insurers, creditors and foreign subsidiaries. SA 5485 also contains potentially ambiguous and misleading language (Sec. 1252, subparagraph (b)) that could expand the universe of business activities subject to sanctions to legitimate business operations allowable under international law. The United States would undoubtedly face complaints and lawsuits from our trading partners questioning their legality if sanctions were imposed on these entities.

Finally, we remain concerned that the procurement ban proposed in SA 5485 could limit the ability of the Military, especially the Fifth and Sixth Fleets, to acquire bunkers, jet fuel, and other fuels. Under the proposed legislation, the head of an agency may not procure goods or services from "a person that meets the criteria for the imposition of sanctions…" Since many of the non-U.S. based multinational oil companies in the world meet these criteria, the Department of Defense may find that the availability of fuel is substantially circumscribed or may be substantially more expensive if it cannot enter into contracts with these companies. In order to be able to acquire fuel from the companies, the President would have to issue a national interest waiver. We do not believe it is in the national security interests of the country to impose such limitations on the flexibility of the Secretary of Defense.

Congress must ensure that the world's focus remains on applying multilateral pressure on Iran and that the United States and our allies continue to present a united front to influence Iran's behavior. SA 5485 and SA 5577 would not further the interests of U.S. national security – indeed, they might detract from current efforts. We respectfully request that any action on these bills be preceded by a thorough and careful review of its potential for counterproductive and harmful consequences.

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CC: Senator John Warner
Congressman Ike Skelton
Congressman Duncan Hunter

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September 17, 2008

Senator Carl Levin
269 Russell Senate Office Building
United States Senate
Washington, DC 20510

**Re: Iran sanctions amendments to S.3001: SA 5485 and SA 5577**

Dear Chairman Levin:

We agree that preventing Iran from developing the capability to produce nuclear weapons is a very important U.S. national security objective. We are concerned, however, that Senate Amendments 5485 and 5577 being considered to the National Defense Authorization Act (S.3001) contain provisions that will undermine rather than promote this critical objective.

First, the extraterritorial extension of sanctions would over-ride and preempt provisions of 17 Executive Orders issued over a 28 year period that provided the legal authority for current sanctions. Second, as explained more fully below, extraterritorial extension of sanctions will reignite economic, diplomatic and legal conflicts with our allies that will frustrate, rather than promote, multilateral action against Iran.

Among other troubling provisions, both SA 5485 and SA 5577 would open the door to expanding the existing unilateral U.S. prohibitions on trade and investment with Iran by U.S. persons and entities by making a parent company liable for the actions of its subsidiaries that are domiciled in foreign countries. This weakens a fundamental principle of U.S law by "piercing the corporate veil" and could have far-reaching negative consequences going well beyond the issue of Iran.

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honor existing contracts and disobey the U.S. sanctions, thereby putting the subsidiaries and their parents in the impossible position of not being able to obey both U.S. and applicable foreign law at the same time.

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The United States and its allies are making progress in assembling broad, multi-national economic and diplomatic action against Iran. Enacting either SA 5485 or SA 5577, and thereby potentially imposing stringent U.S. penalties on entities in the same countries that are assisting us, would only undercut the progress that our diplomats are making. At worst, these other governments could use existing or new blocking statutes and other measures to counteract the threat of U.S. penalties.

In targeting our allies for penalties, these bills would draw international attention away from the core problem: Iran's threatening behavior in seeking nuclear weapons. As Ambassador Nicholas Burns noted in testimony before the Senate Foreign Relations Committee, the administration "could not support... modifications to this act now being circulated in Congress that would turn the full weight of sanctions not against Iran but against our allies that are instrumental in our coalition against Iran." It is counterproductive to penalize entities and individuals in the very countries whose cooperation we need to effectively counteract Iran's dangerous behavior.

In addition, Section 1252 of SA 5485 would make the United States more vulnerable to international commercial complaints and damage U.S. global financial leadership by greatly expanding the universe of entities subject to sanctions to include insurers, creditors and foreign subsidiaries. SA 5484 also contains potentially ambiguous and misleading language (Sec. 1252, subparagraph (b) ) that could expand the universe of business activities subject to sanctions to legitimate business operations allowable under international law. The United States would undoubtedly face complaints and lawsuits from our trading partners questioning their legality if sanctions were imposed on these entities.

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CC: Senator John Warner
Senator Harry Reid
Senator Mitch McConnell
Senator Richard Lugar
Senator Joseph Biden
Senator Richard Shelby
Senator Christopher Dodd

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September 19, 2008

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U.S. House of Representatives
2206 Rayburn House Office Building
Washington, DC 20515

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