



July 16, 2012

The Honorable Max Baucus
United States Senate
511 Hart Senate Office Building
Washington, DC 20510-2602

Dear Senator Baucus:

USA*Engage, an affiliate of the National Foreign Trade Council, an association of several hundred U.S. companies engaged in international trade and investment urges the Finance Committee to make several changes in S.1039 during markup of PNTR for Russia. While legitimate human rights concerns have given rise to S. 1039 as reported by the Senate Foreign Relations Committee on June 26, the bill contains a number of highly problematic provisions that need to be revised to sharpen its focus on protecting human rights without undermining other U.S. foreign policy goals, including U.S. -Russia relations. As currently drafted S. 1039 is overly broad and creates a new global unilateral sanction for the U.S. government to use against virtually any foreign person (including their “agents,” which could be a U.S. entity) for vaguely defined reasons.

In particular the following provisions should be modified:

- Section 4(a)(2)(B) of S. 1039 requires the Secretary of State in consultation with the Secretary of the Treasury to submit to Congress a list of persons who have violated internationally recognized human rights “anywhere in the world.” This expands the scope of S.1039’s sanctions far beyond those involved in Mr. Magnitsky’s torture and death and will make it more difficult for the United States to obtain the cooperation of other nations on other foreign policy goals. S. 1039 should limit liability to those Russians directly involved in the torture and death of Sergei Magnitsky.
- S. 1039 does not clearly define violations of “internationally recognized human rights” leaving it unclear what constitutes sanctionable activity. The bill should provide a clear definition of what constitutes a violation of human rights as well as clear criteria for a finding that a person engaged in the action cited prior to being added to the list.
- Section 4(e) authorizes the chair and ranking members of ten congressional committees to submit names to the Secretary of State to be added to the list, which will complicate and politicize the process.
- The definition of the term “person” in Section 3(4)(B) includes corporations, even though Congress has in the past confined sanctions in this kind of situation to individual perpetrators as in the Torture Victims Protection Act.

- Section 4(a)(3) fails to define the term “agent” in extending liability to those who “acted as an agent of or on behalf of” a person or entity included on the list. This provision could potentially extend liability to correspondent banks, joint venture partners, suppliers and customers. Unless carefully circumscribed with, for example, a test that demonstrates knowing complicity in a violation, the agent provision should be removed.
- Removal from the list in Section 4(c) requires a finding by the Secretary of State that “the person did not engage in the activity for which the person was added to the list.” In essence persons included on the list are presumed guilty until proven innocent.
- S.1039 should terminate after a period of five years.
- The fact that the legislation does not create a private right of action should be explicitly stated in the bill.

We urge the Committee to take our recommendations into consideration.

Sincerely,



William A. Reinsch
Co-Chairman, USA*Engage