

NATIONAL FOREIGN TRADE COUNCIL, INC.

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The Honorable Tim Griffin
U.S. House of Representatives
1232 Longworth House Office Building
Washington, DC 20515-0402

Dear Congressman Griffin:

I am writing in behalf of the National Foreign Trade Council, an association of some 300 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 H.R. 4405, the "*Sergei Magnitsky Rule of Law Accountability Act*."

We understand that on May 7 the House Foreign Affairs Committee will mark up H.R. 4405. While we share the indignation at the murder of Mr. Magnitsky, we believe that the bill as currently drafted is seriously flawed:

- Section 4(a)(2)(A) mandates the Secretaries of State and Treasury to compose a list of persons responsible for gross violations of human rights carried out by Russian officials who would be denied visas to enter the U.S. and have their U.S. assets frozen. Section 4(a)(2)(B) has been altered in the amendment in the nature of the substitute to apply only to persons responsible for violations against individuals seeking "to obtain, exercise, defend or promote internationally recognized human rights...in Russia." Previous drafts of H.R.4405 applied this provision universally. We urge the committee to retain this change.
- H.R. 4405 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.
- H.R. 4405 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.

- Section 4(a)(3) 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.
- H.R. 4405 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 would make implementation difficult and costly and cause major complications in banks’ correspondent relationships.

The NFTC and USA*Engage appreciate the desire of the Congress to be heard on human rights violations in Russia. 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.

Sincerely,



William A. Reinsch
President