

USA*Engage and NFTC Position Statement on PNTR for Russia and Magnitsky Legislation

USA*Engage and the National Foreign Trade Council (NFTC) strongly support legislation exempting Russia from the Jackson-Vanik amendment and providing permanent normal trade relations (PNTR) for Russia. This will allow American companies to compete on a level playing field in Russia following its WTO accession this summer. USA*Engage and NFTC also urge Congress not to enact new sanctions legislation to replace the Jackson-Vanik amendment.

The *Sergei Magnitsky Rule of Law Accountability Act of 2012* (S.1039 and H.R. 4405) is seriously flawed. Both bills would harm U.S. relations with Russia and many other nations and would deny the significant benefits arising from Russian concessions during its WTO accession negotiations.

- S. 1039 and H.R. 4405 mandate the Secretaries of State and Treasury to compose a list of persons “responsible for gross violations of human rights... anywhere in the world.” Those listed would be denied visas to enter the United States and have their U.S. assets frozen. As written, this allows a determination regarding potential human rights violations about every person in every country, a vastly expanded universe beyond Russian persons responsible for the death of Sergei Magnitsky;
- Neither H.R. 4405 nor S. 1039 establish a process to determine what constitutes “responsibility” or to define “gross human rights violations,” creating great uncertainty for implementation;
- The chair and/or ranking members of ten House and Senate committees are authorized 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 creative politicization of the process by Members of Congress and special interest groups;
- The bills’ definition of “person” includes both natural persons and entities, which would include subsidiaries of foreign companies incorporated in the United States whose parent’s conduct anywhere in the world could cause them to be sanctioned based on an opaque and unspecified process;
- The bills require that a person remain on the list “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 bills require 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.” They thereby extend the denial of visas and freezing of U.S. assets to the “agents” of listed persons. The term “agent” is undefined and could be interpreted broadly to cover a wide range of relationships;
- Both bills 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; and
- USA*Engage and the NFTC have long advocated that all unilateral sanctions laws contain a sunset provision. H.R. 4405, the House companion to S. 1039, terminates after ten years. Recent drafts of S. 1039 terminate sanctions only after the Russian government has successfully met specific performance requirements. USA*Engage and the NFTC urge that any sanctions legislation have a specified termination date.

USA*Engage and the NFTC appreciate the desire of 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.