



Russia, Trade, and Human Rights

Thinking Through U.S. Policies

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Introduction

The U.S. Congress in the coming months will consider whether to grant “permanent normal trade relations” with Russia as part of Russia’s pending accession to the World Trade Organization. Russian membership in the organization is a foregone conclusion, but U.S. trade relations with Russia would suffer if Congress balks at granting normal trade relations to Moscow once Russia joins the organization. Further complicating the issue is whether Congress should keep Russia on the list of nations subject to the Soviet-era Jackson-Vanik amendment—which still conditions U.S. trade on a country’s respect for freedom of emigration—or should replace it with a new piece of human rights legislation.

This is why Congress and the Obama administration need to thoughtfully consider the proposed Sergei Magnitsky Rule of Law Accountability Act of 2011, a bill with bipartisan support that seeks to impose visa bans and asset freezes on human rights violators in Russia.¹ Many of its supporters want to condition permanent normal trade relations with Russia, including its “graduation” from the Jackson-Vanik amendment to the 1974 U.S. Trade Act, on the passage of the Magnitsky bill.²

This urge to link the two decisions is understandable. It would be more effective, however, to consider the decisions separately but simultaneously. So let’s look at each decision in turn.

U.S.-Russian trade relations

Granting permanent normal trade relations to Russia is an economic imperative. This status is the norm that governs U.S. trade relations with virtually all countries in the world, regardless of whether they are allies, adversaries, or sites of serious human rights violations. The U.S. economy will take the hit if the United States fails to grant Russia this status since most of the rest of the world will gain preferable access to the Russian market when Moscow joins the 153-nation World Trade Organization.

At the end of 2011, Russia was invited to join the organization, a decision that the United States fully supported. The Russian parliament will ratify Russia's membership by this summer, after which Russia will become the latest member of the organization. A recent report by the Petersen Institute for International Economics estimates that Russia's entry into the organization could lead to a doubling in value of U.S. exports to Russia over just the next few years (from \$11 billion in 2011 to \$22 billion in 2017).³ Benefits include lower tariffs on imported U.S. goods to Russia, protection of intellectual property, and arbitration of trade disputes.

If the United States does not grant Russia permanent normal trade relations status, then the conditions of Russia's accession to the organization, many of which were negotiated by the United States, need not apply to U.S.-Russian trade (Russia has already said it will not apply them). U.S. businesses will sit on the sidelines while Russia's other trading partners benefit. The United States will also have no access to mechanisms for the arbitration of trade disputes.

Many in Congress, led by Senate Finance Committee Chairman Max Baucus (D-MT), support granting Russia normal trade status. The U.S. Chamber of Commerce and the Coalition for U.S.-Russia Trade (which includes major exporting powerhouses such as Boeing Inc., Caterpillar Inc., Citigroup Inc., General Electric Co., Microsoft Corp., and The Procter & Gamble Co.) support it.⁴ Even Russian human rights activists and leading opposition figures support normal U.S.-Russian trade relations.⁵

The Magnitsky Act

This brings us to the second issue at hand in Congress regarding Russia. The Magnitsky Act was introduced by Sen. Benjamin Cardin (D-MD), the co-chairman of the U.S. Helsinki Commission (which monitors human rights and international cooperation in 56 countries), and co-sponsored by nearly a third of Senate members, including 13 more Democrats, 18 Republicans, and one independent. Similar legislation has been twice introduced in the House of Representatives with equally impressive bipartisan support.⁶ Many of its supporters want to make Russia's normal trade status contingent on passage of the Magnitsky Act. Many Russian human rights activists and opposition figures who support the United States granting Russia normal trade relations also support the Magnitsky Act.

The act is named for Russian lawyer Sergei Magnitsky, arrested in November 2008 at the age of 36 on trumped-up charges of assisting the foreign investment firm he represented, Hermitage Capital Management, in tax evasion. Prior to his arrest, Magnitsky had uncovered evidence that the investigation against Hermitage was intended to cover up a scheme to defraud the Russian government of \$230 million in tax income by officials in Russia's Ministry of Internal Affairs and tax administration. Magnitsky's health severely deteriorated in prison as authorities denied him appropriate medical care, kept him in unsanitary

conditions, and ultimately neglected to treat him as he suffered from a visibly painful and life-threatening condition. Magnitsky died after nearly a year in pretrial detention.

The Obama administration has already taken a key step to ensure that Magnitsky’s murderers never enter the United States, imposing visa bans on those involved in Magnitsky’s death under authority provided by the Immigration and Naturalization Act.⁷ The administration also boasts the authority to act against human rights violators in Russia thanks to the issuance of an August 2011 presidential proclamation that suspends the entry into the United States of serious human rights violators from around the world, including those involved in arbitrary detention.⁸

The Magnitsky Act, however, goes further than the proclamation, mandating visa bans and asset freezes on two categories of individuals who will be placed on a public list. The first category includes those implicated in the Magnitsky case—the individuals responsible for his “detention, abuse, or death,” those who participated in covering up these actions, or those who committed the acts of fraud that Magnitsky had uncovered. The second category is broader. It includes all those who kill, torture, or otherwise inflict “gross violations” of human rights against individuals who expose the crimes of Russian state officials or who seek to “obtain, exercise, defend, or promote internationally recognized human rights and freedoms.”

The goals of the Magnitsky Act are certainly laudable, but there are several problems with the legislation as it is currently written. First, it contains a number of ambiguities and peculiarities concerning the scope of its applicability and mechanisms of implementation that undermine its utility. These include:

- Its imposition of sanctions for actions taken against specific persons and companies, as opposed to determinations of ongoing participation in serious human rights violations
- Its imposition of identical sanctions against both individuals who have committed serious human rights violations and those who committed specific economic crimes against a foreign firm
- Its vague standard for determining the applicability of sanctions such as whether the government “has reason to believe” individuals are responsible for certain crimes as opposed to having “credible evidence” (the standard for similar sanctions Congress legislated in 2010 against human rights violators in Iran)⁹
- Its demand that the Treasury Department investigate cases of alleged money laundering that have no apparent relation to U.S. legal, business, or security concerns
- Its insistence on a public list for not only asset freezes but also for visa bans—even though the United States routinely does not publicize the names of those to which it denies entry
- Its mandate to the State Department to respond to congressional requests to put individuals on the public list within 30 days and to provide an annual justification if “few or no” individuals are added in a given year

- Its omission of a specification that the broader category of sanctions applies only to actions within the Russian Federation, by Russian government officials, or against Russian citizens, which makes the bill appear to sanction human rights violators worldwide, not just in Russia alone

Second, the United States already has in place not only a policy to impose sanctions on serious human rights violators, in Russia as elsewhere, but also a policy to steadily push for human rights and democracy in Russia today. The Obama administration, for example, is currently seeking to establish a new \$50 million fund to support Russian civil society organizations, in addition to its regular democracy assistance appropriation (which has averaged around \$35 million annually since 2009).¹⁰ Administration officials also have released public statements on human rights and democracy-related issues dozens of times since 2009.¹¹

Moreover, the administration has supported two major “civil society to civil society” summits facilitating the direct engagement of U.S. and Russian nongovernment organizations to help police human rights in Russia.¹² The Civil Society Working Group of the US-Russia Bilateral Presidential Commission has convened three plenary sessions and has held several working meetings of subgroups on prison reform, migration, child protection, and anticorruption.¹³ The working group is currently co-chaired on the U.S. side by Deputy Assistant Secretary for Democracy, Human Rights, and Labor Thomas Melia, a former senior officer of Freedom House and the National Democratic Institute.

Finally, and most importantly, the Magnitsky Act currently does not really achieve what many of its supporters want—for it to serve as a spiritual successor to the Jackson-Vanik amendment, a landmark piece of human rights legislation that sought to pressure the Soviet Union and other communist states to allow their citizens, in particular Jews and other “prisoners of conscience,” to freely emigrate. Jackson-Vanik conditioned permanent normal trade relations (then known as “most favored nation”) status on the willingness of the Soviet Union and other communist states (including China) to allow their citizens to freely emigrate. When the Soviet Union collapsed, Jackson-Vanik stayed on the books to cover its post-Soviet successors, though most either graduated or, similar to Russia, still receive provisional normal trade relations annually—contingent on the president’s semi-annual affirmation that the state in question respects freedom of emigration.

As a result, Jackson-Vanik has long been recognized as legally and politically anachronistic. Russia not only is in compliance with its terms and is expected to remain so but also is not a “nonmarket economy” like the Soviet Union once was. The United States has long recognized Russia as having a market economy. This means that Jackson-Vanik technically no longer applies, even if Congress must still formally legislate permanent normal trade relations status for Russia.

Similarly, Jackson-Vanik was designed with the United States's major adversary in mind. But Russia is not the Soviet Union. The Russian Federation is and has been a strategic partner in various spheres (including Afghanistan, usually Iran, counternarcotics, counterterrorism, and arms control and nonproliferation), even while major disagreements exist in other spheres (including Syria, Georgia, occasionally Iran, democracy promotion, and missile defense).

The continued application of Jackson-Vanik to Russia and other countries it wasn't designed for has been a longstanding irritant in U.S.-Russian relations. The Russian government has repeatedly warned that passing the Magnitsky Act to replace Jackson-Vanik will have a negative impact on U.S.-Russian relations.¹⁴ This would not be reason to avoid passing the bill, of course. But Congress should still consider the negative impact of legislation that implies a U.S. linkage between Russia and the extinct Soviet Union and between Russia and the more adversarial countries to which the United States typically applies such sanctions. As difficult as it can be to secure sustained Russian cooperation on issues such as gross human rights violations in Syria and Iranian nuclear proliferation, it will be far more difficult to do so if the United States insists on placing Russia in the same basket of top-ranked international offenders.

Still, the Jackson-Vanik amendment looms large in the history of U.S. human rights legislation. For years it was a potent symbol of the United States's commitment to the protection of fundamental human rights and freedoms. To human rights supporters, the pending retirement of legislation with such historical significance demands an equally significant replacement.

The problem is that the Magnitsky Act cannot—and should not—replace Jackson-Vanik with an exclusive focus on Russia. It is only one of several nations to which Jackson-Vanik has applied or continues to apply, including Moldova, long a World Trade Organization member and a nascent post-Soviet democracy. Many of the countries that still fall under its terms are even more pressing candidates than Russia for updated human rights legislation. Consider the numerous cases of serious human rights violations outside of Russia, including the political murders of:

- Azerbaijani print journalist Elmar Huseynov (37, killed March 2005)
- Belarusan politician Viktor Gonchar and entrepreneur Anatoly Krasovsky (41 and 47, respectively, “disappeared” in September 1999) and journalist Dmitry Zavadsky (27, “disappeared” in July 2000)
- Kazakh politician Altynbek Sarsenbayev (43, killed February 2006)
- Kyrgyz politician Medet Sadyrkulov (55, killed March 2009)
- Turkmen Radio Free Europe/Radio Liberty journalist Ogulsapar Muradova (58, died in prison September 2006)
- Ukrainian print journalist Georgiy Gongadze (31, killed by September 2000)
- Kyrgyz print journalist Alisher Saipov (26, killed October 2007)

If the Magnitsky Act is to become the true successor to Jackson-Vanik, it should apply to these and other nations as much as it does to Russia.

A reimagined Magnitsky Act

To serve as a worthy successor to the Jackson-Vanik amendment, the Magnitsky Act needs to be a similarly historic piece of legislation that spans national borders and does not just focus on Russia. It needs to focus on human rights violators in all post-communist states (and one-party holdouts such as China, Cuba, and North Korea) or, reflecting contemporary norms, violators worldwide. Such a reimagined Magnitsky Act, of course, would have far-reaching implications for trade and security relations with U.S. partners around the world.

Because of this, the legislation really needs to prompt a serious discussion about the role of human rights legislation in U.S. foreign policy rather than serve as an unprecedented companion to Russia-specific trade legislation that will benefit our economy greatly in the coming years. Simply put, this question must be answered: Why confine such legislation solely to Russia?

Jackson-Vanik also applied to other communist states, including China. If Jackson-Vanik requires a successor, then in today's context this means introducing a landmark piece of human rights legislation that applies around the world. During the Cold War, the United States concerned itself with human rights violations mainly in the opposing Soviet camp, often excusing or ignoring violations in its own. Today the United States strives to address human rights violations globally and with far less regard for geopolitics. The August 2011 presidential proclamation suspending entry to the United States for serious human rights violators is one major step in this direction.

Of course, there is an obvious problem with applying the sweeping terms of the Magnitsky Act globally or even to all nations that have ever been subject to Jackson-Vanik restrictions. For many countries (think China) the United States would hesitate to universally apply broad sanctions on human rights violators out of concern that it might negatively impact economic or security relations. But if this is the case, then it is no more sensible for such a bill to be applied specifically to Russia—a country with which the United States's economic and security relations are substantial and likely to grow.

In the meantime, the legislation granting permanent normal trade relations to Russia could readily incorporate U.S. concerns about human rights in Russia. The legislation that granted this normal trading status to China in 2000 set a precedent, with the establishment of a joint Congressional-Executive Commission on China designed expressly “to monitor human rights and the development of the rule of law in China, and to submit an annual report to the President and the Congress.”¹⁵ The legislation institution-

alized and promoted Congress's status as an advocate for the victims of human rights violations in China and sent a message that the United States was not normalizing trade with China at the expense of a decline in its defense of human rights. A similar structure could be established to address human rights in Russia, as a Center for American Progress report first proposed in July 2009.¹⁶

Regardless of how Congress handles granting permanent normal trade relations to Russia to benefit U.S. business and allow U.S.-Russian trade to be governed by the same norms that govern our trade with the rest of the world, the United States should also continue to use a variety of instruments to promote human rights and democracy in Russia. But doing so via the Magnitsky Act as currently written would be a mistake. Congress first needs to engage in a fundamental discussion about the role of human rights legislation in U.S. foreign policy today, and only then can it proceed with equally important human rights legislation. This should happen swiftly and separately.

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Endnotes

- 1 For the text of the bill, as introduced on May 19, 2011, see: Sergei Magnitsky Rule of Law Accountability Act of 2011, S. 1039, available at <http://www.opencongress.org/bill/112-1039/text>.
- 2 For the relevant sections of the Trade Act of 1972, see: "19 USC § 2432 - Freedom of emigration in East-West trade," available at <http://www.law.cornell.edu/uscode/text/19/2432>.
- 3 Anders Aslund and Gary Clyde Hufbauer, *The United States Should Establish Permanent Normal Trade Relations with Russia* (Washington: Peterson Institute for International Economics, April 2012), p. 4, available at <http://bookstore.piie.com/book-store/6208.html>.
- 4 See: U.S. Chamber of Commerce, "The U.S. Chamber's PNTR Primer: Why Approving Permanent Normal Trade Relations with Russia Is in the U.S. National Interest" (2012), available at http://www.uschamber.com/sites/default/files/international/files/17411_INTL_PNTR_Primer.pdf; "Coalition for U.S.-Russia Trade," available at <http://www.usrussiatrade.org/facts.php?content=main>.
- 5 David M. Herszenhorn, "Russian Opposition Urges U.S. to End Cold War Trade Sanctions," *The New York Times*, March 12, 2012, available at <http://www.nytimes.com/2012/03/13/world/europe/russian-opposition-urges-united-states-to-end-trade-sanctions.html>.
- 6 For the text of the latest bill, as introduced on April 19, 2012, see: Sergei Magnitsky Rule of Law Accountability Act of 2012, H.R. 4405, available at <http://www.opencongress.org/bill/112-h4405/text>.
- 7 Kathy Lally, "U.S. Puts Russian Officials on Visa Blacklist," *The Washington Post*, July 25, 2011, available at http://www.washingtonpost.com/world/europe/us-puts-russian-officials-on-visa-blacklist/2011/07/25/gIQArcTbZl_story.html.
- 8 The White House, "Presidential Proclamation--Suspension of Entry as Immigrants and Nonimmigrants of Persons Who Participate in Serious Human Rights and Humanitarian Law Violations and Other Abuses," August 4, 2011, available at [The New York Times, August 3, 2011, available at \[http://www.nytimes.com/2011/08/04/us/politics/04policy.html?_r=2\]\(http://www.nytimes.com/2011/08/04/us/politics/04policy.html?_r=2\).](http://www.whitehouse.gov/the-press-office/2011/08/04/presidential-proclamation-suspension-entry-immigrants-and-nonimmigrants-; Helene Cooper,)
- 9 See: Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111-195, 111th Cong., July 1, 2010, Section 105, available at <http://www.gpo.gov/fdsys/pkg/PLAW-111publ195/html/PLAW-111publ195.htm>.
- 10 David M. Herszenhorn, "U.S. Seeking Use of Funds to Aid Russian Democracy," *The New York Times*, March 15, 2012, available at <http://www.nytimes.com/2012/03/16/world/europe/to-aid-russian-democracy-us-seeking-use-of-funds.html>.
- 11 "Human Rights in Russia," available at <http://www.state.gov/p/eur/ci/rs/c41670.htm>.
- 12 "U.S.-Russia Civil Society to Civil Society (C2C) Summit," available at <http://www.irex.org/project/us-russia-civil-society-civil-society-c2c-summit>.
- 13 For more information on the Working Group and the Bilateral Presidential Commission, see: "Civil Society," available at <http://www.state.gov/p/eur/ci/rs/ustrussiatilat/c37328.htm>; "U.S.-Russia Bilateral Presidential Commission," available at <http://www.state.gov/p/eur/ci/rs/ustrussiatilat/index.htm>.
- 14 "Lavrov Warns Magnitsky Bill Would Hurt U.S.-Russia Relations," *Radio Free Europe/Radio Liberty*, April 30, 2012, available at http://www.rferl.org/content/us_russia_magnitsky/24545755.html.
- 15 "Congressional-Executive Commission on China," available at <http://www.cecc.gov/>.
- 16 Samuel Charap and others, "After the 'Reset': A Strategy and New Agenda for U.S. Russia Policy" (Washington: Center for American Progress, 2009), p. 45, available at http://www.americanprogress.org/issues/2009/07/pdf/russia_report.pdf.