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The Russia Sanctions Bill Would Give the President Permanent, Unnecessary, and Almost Unfettered Tariff Authority

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INTRODUCTION

From the moment President Trump announced his April 2025 "Liberation Day" imposition of tariffs on virtually all imports from the vast majority of the United States' trading partners, the debate has raged over the separation of powers between the Congress and the President. The Constitution (Article I, Section 8) clearly grants to the Congress alone the power to "lay and collect Taxes, Duties, Imposts and Excises." Yet Congress has over the years delegated to the President some limited power to impose tariffs in specific circumstances and subject to certain procedural and substantive limitations. Recent weeks have seen yet more tariffs on allies, with the President dusting off another never-before-used-for-tariffs law (Section 338 of the 1930 Smoot-Hawley Tariff Act) to impose 50% duties on more than $20 billion in imports from Canada. The U.S. Trade Representative (USTR) also announced new 10% and 12.5% tariffs on countries accounting for more than 99% of U.S. imports pursuant to Section 301 of the Trade Act of 1974, an unprecedented use of the statute that far exceeds what Congress intended Section 301 to cover.

When many members of Congress believed the President had exceeded his authority by using the International Emergency Economic Powers Act of 1977 (IEEPA) to impose his Liberation Day tariffs, they filed an *amicus* brief before the courts, contending that IEEPA was not a tariff statute, given the absence of the word "duties" or "tariff" anywhere in statute and the absence of the hallmarks of legislation delegating tariff power to the executive. The Supreme Court agreed, striking down Trump's IEEPA tariffs. Its decision in *Learning Resources, Inc. v. Trump* reflects the Court's understanding of congressional practice, noting, "When Congress has delegated its tariff powers, it has done so in explicit terms, and subject to strict limits." It capped the amount and duration of tariffs and "conditioned exercise of the tariff power on demanding procedural prerequisites." At no point, the decision continued, has Congress given "the President power to unilaterally impose unbounded tariffs," which would "represent a 'transformative expansion' of the President's authority over tariff policy, and indeed . . . over the broader economy as well."

All of which raises the question of why Congress would want to walk away from that clear recognition of its power over the imposition of tariffs by enacting the *Senator Lindsey O. Graham Sanctioning Russia Act of 2026*. The reality is that while Trump has in recent

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months sounded a more hawkish public line on Russia, he has so far imposed sanctions on only a handful of companies over Russia's ongoing war against Ukraine, far fewer than the hundreds of sanctions annually that the U.S. imposed between 2022 and 2024. The bill contains numerous commendable provisions to increase these sanctions, or at least to insist that this President *use* his sanctioning power, against the companies that are buying Russian energy, the banks that clear their payments, and the shippers, insurers, and other companies that facilitate Russia's energy flows. But the bill also contains an unnecessary and nearly unbounded grant of tariff authority to the President at a time when the President has already been very aggressive in imposing tariffs on friend and foe alike.

These tariff provisions are unlike any others in the U.S. Code, giving the President enormous discretion to impose tariffs on an ever-expanding array of countries with little obligation to produce a public record of why he is doing so and no opportunity for Congress to overturn them. Moreover, the President's public support for the bill, given his own reluctance to impose sanctions on Russia under existing law, suggests that Trump is mostly interested in the new tariff powers, raising the prospect that the practical impact of the bill will be to raise tariffs on Americans without meaningfully raising sanctions pressure on Russia.

I. MANDATING IMMEDIATE TARIFFS ON ALL GOODS FROM MANY COUNTRIES

First, the current bill *requires* the President to impose tariffs on *all* goods from countries that have purchased Russian oil or natural gas and are on one of three lists: (1) the top five largest importers of Russian oil, (2) the top five largest importers of Russian natural gas, and (3) the top five countries "facilitating Russian oil sanctions evasion." As such, depending on how the bill is read and how many countries appear on more than one list, tariffs must be imposed on all goods from up to 15 countries within 30 days of the bill's enactment. And the bill specifies that the tariffs can be at a rate up to 100% *ad valorem* on top of any preexisting duties. Imposing sky-high tariffs on all goods, including clothing or food or essential medicines that Americans need, has almost nothing to do with sanctioning Russia.

As the American people have learned, these tariffs are taxes on imports paid for by American importers and consumers, at a time when prices of everyday goods are already out of reach for many. The authority to impose tariffs as high as 100% *ad valorem* is far above the limits on tariffs seen in previous trade legislation. Section 122 limits tariff increases to 15%. Both Section 201 and Section 338 include a ceiling of 50% on tariff rate increases. Section 301(a) limits increases to a level that is equivalent in value to the burden or restriction on U.S. commerce. Section 301(b), the basis of Trump's recent 10% and 12.5% tariffs, does not set a numeric limit but requires that the tariffs be "appropriate," and USTR's decision to keep tariffs at no more than 12.5% suggests that the Administration does see the rates as limited. While sanctioning Russia is an important goal, it is not clear why additional tariffs up to a 100% level would help meet that goal. It is not the smugglers of Russian oil and gas that will be paying the tariffs.

Moreover, the bill allows the President every six months to add tariffs on all goods from additional countries if he determines they are among the top five largest importers of Russian oil or natural gas. Because there is no requirement that any of the initially determined tariffs be terminated, the bill leaves open the possibility that every six months, ten new countries could get added to the list of those already subject to these tariffs. The result could be 100% tariffs on the majority of all imports, which effectively allows the President to rewrite the tariff schedule in contravention of the Constitution's grant of tariff-writing authority to the Congress, with these tariffs potentially remaining in place in perpetuity.

II. Unfettered Discretion To Determine Tariff Rates

Second, the bill also provides completely unfettered discretion to the President to determine the initial tariff rates applied to all imports from a country on one of the lists noted above. The bill simply states that the President "shall increase the rate of duty for all goods imported into the United States from a country [qualifying for one of the lists] to a rate up to 100 percent ad valorem." Unlike other trade statutes, where the amount of the duty is correlated to the purpose of imposing the tariffs in the first place (e.g., Section 301 sets tariffs at an amount equivalent to the burden or restriction on U.S. commerce caused by unfair practices; the amount and duration of Section 232 actions must be correlated to how much adjustment in imports is needed to remove the threat to national security; Section 201 safeguards must take into account the "form and amount" of action that would prevent or remedy the injury to the domestic industry), there is no requirement or even any suggestion that the tariff rate imposed under the Russian sanctions bill has anything to do with Russia, or oil and gas trading, or sanctions evasion. Indeed, there is no guidance at all in the bill, giving the President carte blanche to set the rates at anything between a small increase to 100% on any basis he chooses.

III. Wide-Open Waiver Authority

A third major departure from past trade statutes is the nearly boundless authority granted to the President to waive the application of the tariffs (or any of the other sanctions), subject only to a requirement to notify Congress that the President has determined that waiving any given tariff or its application to any given entity is in the national interest and why. This means that the President could pick and choose countries, sectors, or even individual companies or importers that would not have to pay the tariffs, based on a simple but largely unchallengeable assertion that letting someone or some entity off the hook for tariffs is in the national interest. Such open-ended waiver authority is an invitation to corruption and far outside the bounds of existing trade law. The irony of the bill is that the President could put up to 100% tariffs on imports from Ukraine while waiving the up-to-500% required tariffs and the required sanctions on Russia—exactly the opposite of what the late Senator Graham intended.

IV. Opportunity for Endless Changes to Tariff Rates

The bill also departs from traditional trade statutes in its open-ended opportunity for changes to the initially imposed tariff rates. Because constant changes to tariffs cause chaos, confusion, implementation difficulties for customs agents, and substantially increased compliance costs for importers, trade statutes often include provisions that provide for predictability and certainty. Section 201, for example, requires that any tariffs or quotas imposed be phased down "at regular intervals," during the contemplated four-year period of relief, such that the changes in the tariff or quota levels are known well in advance. Similarly, Section 301 requires USTR to propose modifications, consult with interested parties, and provide an opportunity for the presentation of views by affected persons with respect to any proposed modifications of any tariffs initially put in place.

This bill, by contrast, permits USTR "at any time" to modify the tariff rates based upon nothing more than a written determination to Congress that a given country has increased or decreased its engagement with Russian oil or gas sales. There is no requirement to provide any data on what those increases or decreases may be or to correlate the changes in tariff rates to such increased or decreased trading in Russian oil or gas. No advance notice is required, nor is any opportunity for public comment on the tariff rate changes provided for.

V. Lack of Transparency for Underlying Determinations

Throughout the bill, discretion is granted to the President or USTR to make numerous determinations, starting with the list of countries that are the largest oil and gas importers and the largest sanctions evaders. While the bill defines sanctions evading countries as those in which foreign persons are located or operating, if such persons are knowingly engaging in or aiding in the circumvention of Russian oil (but not gas) sanctions, it does not require disclosure of what data or evidence, if any, was used to determine that circumvention was occurring in a given country or how it was measured or over what period of time the circumvention must occur. Is a one-time smuggling operation sufficient to land a country on the list? Is there any requirement that the government knew or should have known that its territory was being used to smuggle oil?

The same is true for the determination of which countries are the largest oil or gas purchasers. Much of the trading in Russian oil and gas is not done by governments themselves but by private actors, some of them legitimate, others not so. The entire supply chain coming out of Russia is deliberately murky, with numerous intermediaries, blended cargoes, a vast "shadow fleet," complex maritime maneuvers, and a network of shell companies. As such, determining which countries make it onto the top five lists will depend heavily on what data set and information is used. However, the bill does not require any of that to be disclosed or indeed collected in the first place. Moreover, to make it onto one of the lists, the country must have "knowingly" made new purchases of Russian oil or gas, but given that the countries themselves are not the primary purchasers, it is not clear what evidence will be relied upon to show that private buyers in a given country knew, or should have known, that the oil they were purchasing originated in Russia.

Similarly, the bill contains an exception from tariffs for those countries importing smaller amounts (less than 15% of total exports) of natural gas, if the importing country has "taken significant steps" to reduce its imports from Russia. However, there is no requirement for any disclosure of the basis for determining what levels of reduction constitute "significant" steps or why some countries are granted an exception when others are not.

VI. Lack of Requirement For Public Input or Data Verification

In addition, the bill stands in contrast to virtually all other trade statutes by the absence of any opportunity for those affected by additional tariffs to weigh in on the impact of the tariffs on them or to dispute or clarify any evidence or data underlying the various determinations made by the President or USTR. There is no opportunity to correct the record to ensure that the tariff decisions are well-grounded in facts and supported by credible evidence and data.

VII. No Possibility for Congress to Disapprove of the Tariffs

Finally, the bill contains a lengthy set of congressional procedures if Congress wishes to stop the President from *terminating* any sanctions or tariffs he is otherwise *required* to impose. There are no procedures that would permit Congress to disapprove or set aside the President's imposition of tariffs in the first place. Indeed, the bill states that Congress "should" hold hearings to review the President's report terminating sanctions or tariffs, but nowhere does the bill suggest that Congress should take any other actions or hold other hearings to consider any of the determinations contemplated in the bill, such as the decision to place specific countries on one of the lists, or the amount of the tariffs, or the decision to waive the application of tariffs (or sanctions) to any person, product, or country.

Conclusion

Former Senator Lindsey Graham was a tireless fighter on behalf of the Ukrainian people, and his plain desire was to hold major purchasers of Russian oil and gas accountable for supporting Russia's war in Ukraine. While the President already has many sanctioning powers available to him under IEEPA, President Trump has chosen not to use them, adopting sanctions against only two Russian companies since coming into office. The clear point of Senator Graham's bill is to *require* the President to get tough on those who continue to buy Russian oil and gas in order to starve Russia's war machine. The best way to do that is to insist on tough sanctions against those doing the buying and selling of Russian oil and gas, along with the bankers who finance it and the shippers and insurers who facilitate such sales, with limited ability to grant waivers or exemptions from such sanctions.

But tariffs are not such a tool. Tariffs are taxes paid by Americans with the costs borne by American consumers. They have at best an indirect impact on governments and an even more indirect impact on those involved in trading, or aiding and abetting the trading, of oil and gas. Oil and gas traders, financiers, and shippers will be very marginally impacted, if at all, by high U.S. tariffs on T-shirts, or teddy bears, or computers, or medicines.

This bill would take us back to where we were before the Supreme Court's decision in *Learning Resources*—back to a world of tariff by whim, with tariffs coming on and off at a moment's notice, based on things that have nothing to do with Russia. Enacting these provisions would be a permanent transfer of tariff-setting power from Congress to the President, since, once given away, it will be virtually impossible for Congress to claw its power back.

If Congress wishes to honor the late Senator Graham's legacy, it should take the unnecessary and dangerous tariff provisions out of this bill, strengthen the provisions requiring the President to actually impose strong sanctions, and then pass it.