

The MEGOBARI Act and the Constitutional Framework of the United States' New Policy Towards Georgia

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The MEGOBARI Act and Its Contexts

On May 23, 2024, just days before the Ivanishvili regime passed its "foreign agents" law, U.S. Representative Joe Wilson of South Carolina introduced a bill in the U.S. House of Representatives: The Mobilizing and Enhancing Georgia's Options for Building Accountability, Resilience, and Independence Act. The English-language acronym of this bill is MEGOBARI.

The initial version of the MEGOBARI Act² was examined by House committees but did not come to a full vote in the House of Representatives. In 2024, a parallel initiative, the "Georgian People's Act,"³ was also introduced in the U.S. Senate by Senators Jim Risch and Jeanne Shaheen; however, it similarly did not reach a vote in the Senate.

On January 3, 2025, with the start of the new congressional session, Representative Joe Wilson reintroduced a revised version of the MEGOBARI Act.⁴ After months of discussion and approval in both House and Senate committees, the bill's name changed, with MEGOBARI remaining a short title while its new full title became: "An Act to Counter the Influence of the Chinese Communist Party, the Iranian Regime, and the Russian Federation in the Nation of Georgia."⁵

Both the original and current versions of the MEGOBARI Act share several key elements, including a critical assessment of Georgia's political regime and its current political situation. Specifically, the Act highlights the collapse of democracy, widespread human rights violations, the stalling of European integration, and a foreign policy increasingly aligned with authoritarian powers in Eurasia - China, Iran, and Russia.

The Act outlines the primary framework for U.S. foreign policy toward Georgia over the next five years. This framework includes both broad strategic goals and specific incentives and punitive measures designed to achieve these objectives.

Therefore, the U.S. Congress grants the executive branch, the President and the Secretary of State, special legal powers to make and implement these decisions. The Act also establishes mechanisms and

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² H. R. 8566, <https://www.congress.gov/bill/118th-congress/house-bill/8566/text?s=1&r=2&q=%7B%22search%22%3A%22MEGOBARI%22%7D>

³ S. 4425, <https://www.congress.gov/bill/118th-congress/senate-bill/4425/text>

⁴ H. R. 36, <https://www.congress.gov/119/bills/hr36/BILLS-119hr36pcs.xml>

⁵ Ibid.

procedures for congressional oversight of its implementation. Specifically, it mandates that authorized executive officials submit relevant reports to Congress within prescribed timeframes.

After being considered in committees of both the House of Representatives and the Senate, the Act was passed by the House on May 5, 2025, with a qualified bipartisan majority of 349 votes in favor and 42 against. On May 6, the Senate accepted the bill for consideration and registered it on its legislative calendar.

It is expected that the Act will also gain qualified bipartisan support in the Senate (it has already been endorsed by the Senate Foreign Relations Committee). Once passed by the Senate and signed by President Trump, the Act will become law, with its enforcement falling under the responsibility of the Trump administration. After Senate approval, the President has a 10-day period in which to sign the bill into law.

The MEGOBARI Act faces the risk of failure only under a few specific circumstances: a) if the Senate does not pass the Act by the end of the current legislative session (i.e., by the end of the calendar year); b) if, after Senate passage, the President employs the so-called “pocket veto.” This occurs when Congress presents the bill to the President at the very end of its session, and the President chooses not to sign it within the 10-day period. If Congress adjourns before the 10 days expire and the President has not signed the bill, it does not become a law; c) if the President directly vetoes the bill and Congress fails to override it. Given the current political situation, these scenarios are considered unlikely.

The MEGOBARI Act establishes a comprehensive and targeted sanctions regime against the Ivanishvili regime. This includes the imposition of so-called “secondary sanctions”,⁶ measures against individuals or entities that violate the primary sanctions. These secondary provisions significantly expand the scope and reach of the sanctions.

Due to the potential of these sanctions to apply strong external pressure on the Ivanishvili regime, there is a considerable public interest and anticipation surrounding the Act in Georgia.

The regime’s propaganda not only downplays the chances of the Act’s adoption,⁷ but also seeks to undermine its significance and the effectiveness of the tools it provides. A common tactic is to falsely portray the powers delegated to the President and executive branch by the Act as legally non-binding, which is demonstrably false.

The complexity of the U.S. constitutional and political system, combined with limited public knowledge about it in Georgia, is exploited by regime propaganda to mislead the public. Understanding this

⁶ Meagher, Daniel. "Caught in the economic crosshairs: secondary sanctions, blocking regulations, and the American sanctions regime." *Fordham L. Rev.* 89 (2020): 999.

⁷ Paata Salia – *We hope that the Senate will better understand what is important for improving Georgia-U.S. relations and that the "Megobari Act" will not become law*, May 6, 2025, <https://1tv.ge/news/paata-salia-imeds-gamovtqvamt-rom-senati-uketasad-dainakhavs-tu-ra-aris-mnishvnelovani-saqartvelosa-da-ashsh-is-urtiertobebis-gasaumjobeseblad-da-am-aqts-gagrdzeleba-aghar-eqneba/>

institutional and systemic context is essential for a proper analysis of the MEGOBARI Act, both in terms of its legal content, and its potential political consequences.

Division of Powers in U.S. Foreign Policy Decision-Making and Implementation

The U.S. Constitution is based on the doctrine of the separation of powers, which rejects a strict division between branches of government and incorporates mechanisms of checks and balances, as well as tools for coordination among the branches.⁸ As a system grounded in classical liberal constitutionalism, the U.S. Constitution, on the one hand, does not recognize unlimited powers, and on the other - it avoids strictly exclusive assignment of powers to any specific branch or official.⁹ Even when a particular government power is primarily vested in one branch or official, the doctrine of checks and balances ensures that other branches maintain mechanisms for influencing the exercise of that power.

These principles are crucial when analyzing the division of authority in foreign policy formulation and execution. The determination and enforcement of foreign policy are powers of the political branches, the federal Congress and the President.¹⁰ Among the two chambers of Congress, the Senate holds special functions in this regard. Namely, the Senate approves ambassadors nominated by the President and has the authority to ratify international treaties that the President has signed.

Federal courts generally regard the political branches as primarily responsible for conducting foreign relations and exercise limited judicial oversight in this domain.¹¹

In the realm of foreign relations, courts may review the implementation of laws enacted by Congress. However, even in such cases, courts recognize the broad constitutional discretion of the President in foreign relations and adopt a deferential approach when reviewing the President's interpretations of the law.

In the landmark case of *Curtis Wright*, one of the oldest precedents, President Franklin Delano Roosevelt, acting under authority granted by a Congressional resolution, imposed an arms embargo on Latin America. The arms manufacturers argued that this was an unconstitutional delegation of legislative authority by Congress to the President. In response, the Supreme Court ruled:

“It is quite apparent that if, in the maintenance of our international relations, embarrassment -- perhaps serious embarrassment -- is to be avoided and success for our aims achieved,

⁸ Ackerman, Bruce. "The new separation of powers." *Harvard law review* (2000): 633-729.

⁹ Martinez, Jenny S. "Inherent executive power: A comparative perspective." *Yale LJ* 115 (2005): 2480.

¹⁰ Yoo, John. *The powers of war and peace: The Constitution and foreign affairs after 9/11*. University of Chicago Press, 2019.

¹¹ *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936)

congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved. Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results.”¹²

As a key constitutional precedent regarding presidential powers, the “Youngstown Steel Case”¹³ establishes that the President’s power is at its strongest when it is based both on the President’s constitutional authority and powers delegated by Congress through legislation. However, the President’s power is the weakest when it relies solely on the claim of President’s constitutional authority and is exercised against the laws passed by Congress.

In this latter case, courts must act as arbiters and determine whether the President has the authority to act against a law passed by Congress solely based on their own powers. In such cases, presidential action is constitutional only when Congress does not have specific legislative authority over the matter at hand. It is important to note that the U.S. Federal Congress has limited legislative powers, and its authority is constrained by the enumerated powers specified in Article I of the Constitution (often referred to as “enumerated powers”¹⁴ or “powers explicitly granted by the Constitution”).

As mentioned earlier, Congress does have constitutional authority over foreign relations. Therefore, the idea that the President does not require special delegations of power from Congress in the conduct of foreign affairs is incorrect. Furthermore, when it comes to restrictive measures and economic sanctions, such legislative foundation is not only necessary but constitutionally required. This is precisely what is defined in the “Youngstown” case standard.

The Supreme Court had to use the framework of the “Youngstown” case in the “Dames & Moore v. Regan” case, which involved frozen Iranian assets during the Iran-U.S. crisis. Part of the agreement regarding the release of hostages taken by Iran at the U.S. Embassy involved the creation of a separate arbitral tribunal, where American companies whose assets had been expropriated by Iran would have the opportunity to seek compensation from the Iranian government. According to the agreement, the sanctions and seizure of Iranian assets in the U.S. were to be lifted, and American companies would no longer be able to bring lawsuits in U.S. courts against Iran.

¹² Ibid.

¹³ Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952)

¹⁴ Coan, Andrew, and David S. Schwartz. "The Original Meaning of Enumerated Powers." Iowa L. Rev. 109 (2023): 971.

In line with the agreement, President Reagan removed the seizure on Iranian assets in the U.S. and allowed for their transfer to Iran. This action was challenged by the American affected companies that had lost the opportunity to seek compensation from Iran, according to the U.S. court ruling.

The U.S. Supreme Court, relying on the precedent set by “Youngstown”, determined that the President had broad powers delegated by Congress under the International Emergency Economic Powers Act (IEEPA):

“Because the President's action in nullifying the attachments and ordering the transfer of the assets was taken pursuant to specific congressional authorization, it is ‘supported by the strongest of presumptions and the widest latitude of judicial interpretation, and the burden of persuasion would rest heavily upon any who might attack it’.”¹⁵

It is noteworthy that the IEEPA serves as the legal basis for all U.S. financial sanctions. In the “Dames & Moore v. Regan” case, the Supreme Court further clarified the legislative and constitutional sources that give the President broad powers to impose financial sanctions. This authority is closely tied to the President's constitutional power to conduct foreign policy.

As the Supreme Court explained: “This Court has previously recognized that the congressional purpose in authorizing blocking orders is “to put control of foreign assets in the hands of the President. . . .” (Propper v. Clark, 337 U. S. 472, 337 U. S. 493 (1949). Such orders permit the President to maintain the foreign assets at his disposal for use in negotiating the resolution of a declared national emergency. The frozen assets serve as a ‘bargaining chip’ to be used by the President when dealing with a hostile country.”¹⁶

Thus, in light of the constitutional division of powers in foreign relations, Congress delegates broad legal discretion to the President in areas such as economic sanctions and other related actions. This delegation is justified, in part, by the specific nature of foreign policy: rapidly changing environments, the unique nature of information sources, and the strong need for confidentiality in decision-making. To effectively carry out these powers, the President requires wide discretion over their implementation. Given these considerations, it would be an error to suggest that the general language of the MEGOBARI Act, which delegates broad powers to the President, is intended to create ambiguities or justify inaction by the President in the future. On the contrary, the broad powers granted by Congress set general goals and give the President the widest possible latitude in enforcing them. This empowers the President to take the necessary actions without being restricted by overly specific directives, enabling a more flexible and responsive approach to foreign policy challenges.

¹⁵ Dames & Moore v. Regan, 453 U.S. 654 (1981), citing Youngstown, 343 U.S. at 343 U. S. 637 (Jackson, J., concurring)

¹⁶ Ibid.

In the following sections of this article, when discussing the MEGOBARI Act in detail, we will specifically examine the broadly delegated powers to the President. These powers are not ambiguous, as the President's authority regarding the use of economic and visa sanctions, as well as incentivizing measures, is clearly defined. As we have already stated, this broad delegation of authority reflects Congress's intention to provide the President with all the necessary tools to effectively achieve the Act's goals.

The MEGOBARI Act grants the President and the executive branch special powers to implement the foreign policy objectives set by Congress concerning Georgia. These powers carry legal force, and executive officials are required to report to Congress on their implementation according to the procedures established within the Act itself.

Structure, Content and Potential Outcomes of the MEGOBARI Act

A) Political Assessment of the Situation in Georgia and Its Surroundings

The only declarative part of the MEGOBARI Act lies in the political assessments upon which Congress bases its legally binding policy. These assessments are presented in Section 3 of the Act, where Congress "commends the progress of the Georgian people on the path to building an innovative and productive society following the restoration of independence from the Soviet Union."

However, it also notes that "in recent years, democracy in Georgia has significantly regressed, as evidenced by various independent indexes and assessments, and the current government of Georgia has become increasingly hostile toward independent civil society and its primary Euro-Atlantic partners while progressively strengthening ties with the Russian Federation, the People's Republic of China, and other anti-Western authoritarian regimes."

According to Congress, the situation in Georgia is unacceptable and contradicts U.S. national interests. Specifically, it emphasizes that "the consolidation of democracy in Georgia is critically important for regional stability and U.S. national interests, and it is in the U.S. national interest to protect and strengthen democracy in Georgia."

B) Defining U.S. Foreign Policy Goals Toward Georgia

By emphasizing the consolidation of democracy in Georgia as a U.S. national interest, Congress defines specific policies in U.S. foreign policy aimed at addressing the consequences of Georgia's democratic backslide, continuing democratization, and restoring the foreign policy focus on European and Atlantic integration.

These policies, in more specific terms, are defined as follows:

a) Support for European integration in Georgia, based on the constitution of Georgia and the will of the Georgian people:

More specifically, the U.S. Executive Branch will encourage Georgia to renew the inclusive process of fulfilling the conditions set by the European Commission through governmental institutions that have democratic legitimacy granted by the people.

To achieve this goal, the Executive Branch must review all existing and potential foreign and security assistance programs for Georgia and use these tools to encourage the Georgian government to return to the European integration agenda, and adopt policies and legislation that reflect the will of the Georgian people.

Section 5 of the Act stipulates that the Secretary of State and the Administrator of the U.S. Agency for International Development (USAID) must present a report based on which U.S.-Georgia relations will be reviewed, and a new policy will be determined for the Act's five-year validity period.

Importantly, if the current Georgian government changes course and returns to the path of Euro-Atlantic integration and democratization, the Secretary of State must notify Congress and take actions to improve bilateral relations with Georgia.

b) Containing the Consolidation of Authoritarianism and Supporting Civil Society:

The second significant group of measures that the Executive Branch must implement relates to containing the consolidation of authoritarianism. This includes continuing support for the Georgian people and civil society in several key areas: free and fair elections, freedom of assembly, an independent and accountable judiciary, media freedom, transparency and accountability in the public sector, the rule of law, combating malign influence, and anti-corruption efforts.

U.S. general policy should also focus on holding individuals accountable for undermining these democratic standards and values through sanctions.

More specifically, it also includes pressure on the Georgian government to release protesters who are victims of political persecution and investigate the manipulation of the October 2024 elections.

c) Protecting Georgia from Malign Russian Influence:

The policy outlined by the MEGOBARI Act involves more active assistance from the United States to defend Georgia's sovereignty from Russian interference and to counter Russian malign influence.

This includes support for enhancing Georgia's capacity to defend its territorial integrity and sovereignty from further Russian aggression, as well as engaging Georgia in international efforts against Russian aggression, including in sanctions policy. Additionally, Georgia will be encouraged to reduce its trade ties with Russia.

The Act also envisions maintaining existing military and security relationships and assistance, to the extent possible, even during the period of individual sanctions, and strengthening this cooperation if Georgia returns to the path of Euro-Atlantic integration and democratization (Section 7).

C) Enforcement of the Act: Visa and Individual Property Sanctions

The most effective mechanisms for achieving the objectives defined by the MEGOBARI Act are the individual sanctions provided for within the Act itself. This point is particularly significant, as the Act explicitly excludes the imposition of economic sanctions against the country as a whole. All sanctions under the Act are directed individually at persons acting against the national interests defined by Georgia's Constitution, not at Georgia as a sovereign state or at Georgian citizens generally. Therefore, claims made by the Ivanishvili regime that the MEGOBARI Act is "hostile" toward Georgia as a sovereign country or its citizens are false.

It is noteworthy that previous U.S. sanctions against representatives of the Ivanishvili regime have been based primarily on general immigration law discretion or on existing sanction regimes related to gross human rights violations and Russian influence operations.

The MEGOBARI Act now provides a significant legal foundation by establishing an independent sanctions framework specifically targeting the current regime in Georgia. The Act defines key parameters of the Georgia sanctions framework. Namely, the types of sanctions to be used, the categories of individuals subject to these measures, and so-called "secondary sanctions" against those who violate the rules established by the regime.

Following the Act's passage, the President must, within no more than 120 days, issue a normative act - an executive order (Section 1, e), 1), to clarify the relevant criteria and procedures. The President will also delegate to the Secretary of State and the Secretary of the Treasury the authority to impose the relevant visa and property sanctions on specific individuals, as well as the authority to implement and manage the sanctions regime as a whole.

Notably, the creation of a distinct sanctions regime targeting Georgia's ruling authorities does not revoke the President's authority to impose sanctions under other legal frameworks or to maintain existing ones (Section 1, e), 3).

This means that the adoption of the MEGOBARI Act does not lift the sanctions already imposed on Bidzina Ivanishvili,¹⁷ Otar Partskhaladze,¹⁸ Vakhtang Gomelauri,¹⁹ and others under sanctions regimes

¹⁷ Sanctioning Georgian Dream Founder Bidzina Ivanishvili, Press Statement Antony J. Blinken, Secretary of State, December 27, 2024, <https://ge.usembassy.gov/sanctioning-georgian-dream-founder-bidzina-ivanishvili/>

¹⁸ <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=45092>

¹⁹ Treasury Sanctions Georgian Ministry of Internal Affairs Officials for Brutality Against Protesters, Journalists, and Politicians, December 19, 2024, <https://home.treasury.gov/news/press-releases/jy2759>

related to Russian foreign influence operations, the war in Ukraine, or the Magnitsky Act. Nor does it prevent the imposition of additional sanctions under the MEGOBARI Act itself.

Defining the Circle of Sanctioned Individuals:

The scope of individuals subject to sanctions under the MEGOBARI Act is broad. It includes not only formal officials of the Ivanishvili regime and their close relatives but also individuals who have never held official government positions. This latter criterion is particularly important, as it takes into account the informal power structures surrounding Ivanishvili and allows for targeting the instruments of his unofficial influence.

According to the Act, the President is required to impose sanctions on individuals in the Georgian government and other persons who were involved in obstructing Georgia's Euro-Atlantic integration through actions such as significant corruption, acts of violence, or intimidation.

The President, along with the Secretary of State and the Secretary of the Treasury, acting under delegated authority, is obligated to evaluate and determine sanctions in accordance with the MEGOBARI Act and the executive order issued pursuant to it. The President must submit to Congress a report with a list of the sanctioned individuals and the rationale for each decision whether to impose, decline, or make exceptions regarding sanctions.

"Government officials" are defined as all persons who, since January 1, 2014, have served as members of the Georgian Parliament, held senior positions within a political party, or worked in leadership roles in the Georgian government, including law enforcement, intelligence, judicial, municipal, or local self-governing bodies. "Other individuals" include the close relatives (spouses, children, parents) of such officials who have benefited from the actions of those officials.

The definition becomes even broader for those individuals who are subject to sanctions for "undermining the sovereignty or territorial integrity, peace, security, or stability of Georgia." According to the Act, the U.S. President is obligated to impose sanctions on all persons who are responsible for, complicit in, directly or indirectly involved in, or attempted to participate in actions or policies that undermine Georgia's sovereignty or territorial integrity, peace, security, or stability. This includes issuing orders, supervising, or otherwise directing such activities.

Under this provision, sanctions may also apply to individuals who led or held a position in an entity or organization involved in the above-described subversive activities, as well as close relatives (family members) who benefited from the sanctioned individual's actions.

Therefore, this final category enables sanctions against informal instruments of the Ivanishvili regime, such as heads and/or owners of regime-linked business entities; leaders or members of informal paramilitary groups or units operating as part of the regime's repressive apparatus; heads, owners,

and content directors of regime propaganda outlets; any individual complicit in the regime's activities that undermined Georgia's sovereignty and stability; as well as their close relatives.

Types of Sanctions:

Section 6 of the MEGOBARI Act provides for two types of sanctions: property blocking and visa sanctions. Property blocking sanctions rules grant the President the authority, based on IEEPA, to use all relevant powers to block and prohibit all transactions concerning the property or ownership interests of a sanctioned individual located in the U.S., entering U.S. jurisdiction, or owned or controlled by a U.S. person or entity.

Visa sanctions include not only the prohibition of issuing visas but impose general ban of entry into the U.S., immediate revocation and prohibition of existing visas, and barring the sanctioned individual from receiving any benefit under U.S. immigration laws. Additionally, amnesty for violations of U.S. immigration laws by the sanctioned individuals is prohibited.

The use of both types of sanctions requires notification to Congress, detailing both the identity of the sanctioned individual and the factual basis for the sanctions. The President will have the authority to temporarily lift sanctions if, in their judgment, it serves the national security interests of the U.S. Congress must also be informed of the rationale behind such a decision.

Thus, the MEGOBARI Act establishes a strong legal framework for a special and comprehensive sanctions regime against the Ivanishvili regime, which includes so-called "secondary sanctions," making financial sanctions imposed under this Act enforceable globally. Specifically, anyone who violates the prohibitions imposed by the sanctions will be subject to the same sanctions under IEEPA as those imposed on the sanctioned individual.

This means that U.S. financial institutions (banks, investment funds, stock exchanges, brokerage companies, etc.) will generally not engage in business with organizations and individuals who have commercial ties with the sanctioned individuals. The critical access to the U.S. financial system globally compels organizations operating under other jurisdictions to comply with the U.S. financial sanctions and refrain from establishing business relations with sanctioned individuals.

D) Enforcement of the Act: Intelligence Gathering and Equipping Intelligence Agencies with Special Authorities

Section 5 of the MEGOBARI Act obligates the Secretary of State, in cooperation with the Director of National Intelligence, to submit a report to the relevant committees of Congress no later than 180 days after the passage of the Act. This report should outline Russia's intelligence activities in Georgia,

including operations, assets, and influence. The report must also include a separate section on China's influence operations in Georgia.

Considering that Bidzina Ivanishvili and Otar Partskhaladze are already sanctioned under the existing sanctions regime related to Russia, this report is likely to become a primary factual basis for the imposition of sanctions under the MEGOBARI Act against representatives of the Georgian Dream regime and affiliated individuals.

Summary

The MEGOBARI Act establishes a clear and strong legal framework for the U.S. policy towards Georgia. It outlines general objectives, defines specific policies, and provides a broad discretionary authority to the executive branch to implement them. These powers include the creation and enforcement of a special individualized sanctions regime targeting those responsible for democratic backsliding in Georgia and for hindering the country's European and Atlantic integration processes.

The purported sanctions framework is extensive and allows for its application to both the formal and informal structures and elements of Ivanishvili's regime. The inclusion of "secondary sanctions" ensures the global enforceability of the financial sanctions imposed.

The MEGOBARI Act confirms the executive branch's decision to suspend the U.S.-Georgia Strategic Partnership Charter signed in 2009. However, at the same time, it establishes a clear framework for potentially restoring and further developing this cooperation if Georgia is able to return to the path of democratization and European integration.