

111TH CONGRESS
1ST SESSION

H. R. 2493

To prevent wealthy and middle-income foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by undermining the secondary and primary markets for sovereign debt.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2009

Mr. MASSA (for himself, Mr. TONKO, Mr. McMAHON, Mr. WEXLER, Mr. BISHOP of New York, Mrs. MALONEY, and Mr. MAFFEI) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on Foreign Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To prevent wealthy and middle-income foreign states that do business, issue securities, or borrow money in the United States, and then fail to satisfy United States court judgments totaling \$100,000,000 or more based on such activities, from inflicting further economic injuries in the United States, from undermining the integrity of United States courts, and from discouraging responsible lending to poor and developing nations by under-

mining the secondary and primary markets for sovereign debt.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Judgment Evading
5 Foreign States Accountability Act of 2009”.

6 **SEC. 2. STATEMENT OF PURPOSE.**

7 The purpose of this Act is to prevent certain wealthy
8 and middle-income foreign states that do business, issue
9 securities, or borrow money in the United States, and then
10 fail to satisfy United States court judgments totaling
11 \$100,000,000 or more based on such activities, from in-
12 flicting further economic injuries in the United States,
13 from undermining the integrity of United States courts,
14 and from discouraging responsible lending to poor and de-
15 veloping nations by undermining the secondary and pri-
16 mary markets for sovereign debt.

17 **SEC. 3. FINDINGS.**

18 Congress finds the following:

19 (1) Foreign states that do business, issue secu-
20 rities, or borrow money in the United States, and
21 then refuse to satisfy judgments of United States
22 courts entered against them in connection with dis-
23 putes resulting from these or other commercial ac-
24 tivities, directly or indirectly inflict billions of dollars

1 of damage in United States, and undermine the
2 credibility of the United States courts.

3 (2) Foreign states that engage in such behavior
4 can infect the management of corporations and
5 other entities that they own or control with their
6 profligate and irresponsible habits. When the lax
7 ethical standards that permit government officials to
8 flout lawful judgments corrupt the behavior of the
9 management of their state-owned corporations, the
10 injury to United States taxpayers is multiplied.

11 (3) The Republic of Argentina is a primary ex-
12 ample of a foreign state that has incurred large
13 debts in the United States, defaulted on those debts,
14 and then refused to honor lawful judgments of
15 United States and other courts ordering repayment.
16 In 2001, Argentina defaulted on more than
17 \$81,000,000,000 in sovereign debt, the largest such
18 default in history. In 2005, after refusing all efforts
19 by creditors to negotiate the terms of an exchange
20 offer, Argentina unilaterally offered lenders approxi-
21 mately 27 cents on the dollar in its restructuring
22 deal, far below the international norm for sovereign
23 debt restructurings. Argentina repudiated the debts
24 owed to the unprecedented proportion of bondholders
25 who rejected that offer.

1 (4) Argentina still owes United States bond-
2 holders more than \$3,500,000,000. Overall, the de-
3 fault and restructuring by Argentina have cost
4 United States bondholders, taxpayers, and share-
5 holders more than \$10,000,000,000.

6 (5) Argentina has the capacity to pay its exter-
7 nal creditors. The nation now holds more than
8 \$45,000,000,000 in reserves. Argentina chose to pay
9 off its \$9,800,000,000 debt to the International
10 Monetary Fund in full in 2005, years before it was
11 due, and has similarly announced an intention to
12 pay sovereign creditors of the Paris Club of Official
13 Creditors in full and partially in advance.

14 (6) United States bondholders have won numer-
15 ous court rulings against Argentina relating to Ar-
16 gentina's default on debt owed to such bondholders,
17 and Argentina's decision to repeatedly ignore these
18 judgments undermines respect for the United States
19 legal system. Despite having agreed to submit to the
20 jurisdiction of the State of New York and to waive
21 claims of sovereign immunity, Argentina is now con-
22 testing at least 163 lawsuits and refusing to honor
23 88 judgments against it.

24 (7) Argentina has demonstrated a similar dis-
25 regard for claims brought by United States investors

1 before the International Centre for Settlement of In-
2 vestment Disputes (ICSID). Argentina is the re-
3 spondent in more ICSID cases than any other na-
4 tion, now accounting for more than a quarter of the
5 tribunal's caseload. Argentina has behaved in a man-
6 ner that undermines the viability of the ICSID proc-
7 ess, thereby endangering the worldwide investments
8 of United States businesses that rely upon this
9 forum for adjudication of disputes.

10 (8) Argentina's debts are legitimate, though the
11 country has attempted to argue that the borrowings
12 it seeks to repudiate are somehow "odious". Any as-
13 sertion that the Argentine debt now outstanding was
14 incurred by the repressive, nondemocratic regimes
15 that ruled Argentina in the late 1970s and early
16 1980s is inaccurate. The bonds currently held by
17 United States creditors were not incurred by non-
18 democratic regimes; rather, they were issued by
19 democratically elected Argentine governments.

20 (9) While it is true that the Argentine military
21 junta—which caused tremendous suffering during a
22 tyrannical 7-year reign—borrowed from foreign
23 banks, 96 percent of that debt was refinanced in
24 1993 when Argentina's "Brady Plan" restructuring
25 was completed. That restructuring was underwritten

1 by the United States Government. Prior to the
2 Brady Plan restructuring, Argentina had undergone
3 two “major restructurings” of its foreign debt—the
4 first in 1985, and the second in 1987.

5 (10) None of the debt now held by United
6 States creditors dates from the days of the Argen-
7 tine military junta. Further, even if it were fair to
8 characterize the debt issued in the 1993 Brady Plan
9 restructuring as somehow derivative of junta-era
10 debt—a notion that maligns the United States pol-
11 icymakers who approved and underwrote the Brady
12 Plan on behalf of the American people—only 5 per-
13 cent of the defaulted debt now held by United States
14 creditors was issued during or before 1993. Fully 95
15 percent of the defaulted debt held by United States
16 creditors was incurred after 1993 by freely elected
17 Argentine governmental officials and has no rela-
18 tionship to the military junta.

19 (11) Argentina’s defaults have badly under-
20 mined its own economy. According to a team of Ar-
21 gentine economists led by Martin Krause, Argentina
22 loses more than \$6,000,000,000 in foreign direct in-
23 vestment every year as a result of its default and
24 debt repudiation and the resultant risk profile.

1 (12) Argentina’s serial defaults have encour-
2 aged other nations to take the same course. On De-
3 cember 12, 2008, Ecuador selectively defaulted on
4 \$3,800,000,000 in obligations to investors—including
5 United States creditors—who had purchased its
6 sovereign bonds, citing Argentina as its example. Ec-
7 uador earned record income from oil exports in 2008
8 and has ample funds to honor its debts. Ecuadorian
9 President Rafael Correa apparently plans to force its
10 foreign bondholders (including United States bond-
11 holders) to accept restructuring terms that will re-
12 sult in substantial losses to foreign investors who
13 lent Ecuador funds in good faith.

14 (13) Unfortunately, many persons in the United
15 States are unaware of this irresponsible behavior
16 and disregard for the rule of law, and continue to
17 invest in, lend to, and do business with Argentina
18 and other foreign states and their state-owned cor-
19 porations, unaware of the associated risks.

20 (14) Worse still, those who are injured as a re-
21 sult of this conduct often have little or no recourse.
22 Judgment evading foreign states and their state-
23 owned corporations enjoy a safe haven within their
24 national borders, and this fact often presents an in-

1 surmountable obstacle to recovery for those who are
2 injured by the behavior of those states.

3 (15) The absence of a remedy for defaults by
4 such foreign states undermines nations that badly
5 need to access capital from foreign lenders, with dis-
6 proportionate harm falling on responsible and demo-
7 cratic poor nations. By undermining confidence in
8 the secondary market for sovereign debt, judgment
9 evading foreign states significantly increase the risk
10 that primary lending to less-advantaged nations will
11 be curtailed, depriving deserving sovereign borrowers
12 of access to the international capital markets.

13 (16) Action by the United States Government
14 to combat this growing problem must include meas-
15 ures that both protect against the irresponsible con-
16 duct of judgment evading foreign states and their
17 state-owned corporations, and motivate such states
18 and corporations to raise their standards of behav-
19 ior.

20 (17) An effective means of achieving this impor-
21 tant objective is to deprive judgment evading foreign
22 states and their state-owned corporations of the
23 privilege of issuing securities or borrowing in the
24 United States, and requiring that warnings of their
25 irresponsible behavior be given to persons in the

1 United States who are contemplating investing in,
2 lending to, or doing business with such states and
3 businesses, until those states demonstrate that such
4 measures are no longer necessary.

5 **SEC. 4. DEFINITIONS.**

6 For purposes of this Act:

7 (1) AGENCY OR INSTRUMENTALITY OF A FOR-
8 EIGN STATE.—The term “agency or instrumentality
9 of a foreign state” has the meaning given that term
10 in section 1603(b) of title 28, United States Code.

11 (2) FINAL JUDGMENT.—The term “final judg-
12 ment” means any judgment of a United States dis-
13 trict court, the Court of International Trade, or the
14 court of any State, that is no longer eligible to be
15 appealed to any court in the United States.

16 (3) FOREIGN STATE.—The term “foreign state”
17 has the meaning given that term in section 1603(a)
18 of title 28, United States Code, except that it does
19 not include an agency or instrumentality of a foreign
20 state.

21 (4) INTERNATIONAL ORGANIZATION.—The term
22 “international organization” means an entity des-
23 ignated by the President as being entitled to enjoy
24 the privileges, exemptions, and immunities provided

1 by the International Organizations Immunities Act
2 (22 U.S.C. 288 et seq.).

3 (5) JUDGMENT EVADING FOREIGN STATE.—

4 The term “judgment evading foreign state” means
5 any foreign state that—

6 (A) has one or more judgments entered
7 against it by any United States district court,
8 the Court of International Trade, or the court
9 of any State, the combined amount of which
10 judgments exceeds \$100,000,000;

11 (B) fails to satisfy in full any such judg-
12 ment for a period of more than 2 years after
13 the judgment becomes a final judgment, regard-
14 less of whether such judgment became a final
15 judgment before the date of the enactment of
16 this Act;

17 (C) is not a foreign state eligible for—

18 (i) financing through the Inter-
19 national Development Association but not
20 from the International Bank for Recon-
21 struction and Development; and

22 (ii) debt relief under the Enhanced
23 HIPC Initiative (as defined in section
24 1625(e)(3) of the International Financial

1 Institutions Act) or under the Multilateral
2 Debt Relief Initiative.

3 (6) STATE-OWNED CORPORATION OF A JUDG-
4 MENT EVADING FOREIGN STATE.—The term “state-
5 owned corporation of a judgment evading foreign
6 state” means any corporation or entity, other than
7 a natural person—

8 (A) that is an agency or instrumentality of
9 a foreign state that is a judgment evading for-
10 eign state; or

11 (B) a majority of the shares or other own-
12 ership interest of which is held, either directly
13 or indirectly, by a judgment evading foreign
14 state or by an agency or instrumentality of a
15 foreign state that is a judgment evading foreign
16 state.

17 (7) STATE.—The term “State” means each of
18 the several States, the District of Columbia, and any
19 commonwealth, territory, or possession of the United
20 States.

21 **SEC. 5. STATEMENT OF POLICY.**

22 It shall be the policy of the United States—

23 (1) to advocate within the governing bodies of
24 international organizations and in other foreign pol-
25 icy settings for the full compensation and fair treat-

1 ment of United States taxpayers and other persons
2 in whose favor judgments have been awarded by the
3 United States courts;

4 (2) to seek to protect the economic interests of
5 such taxpayers and other persons and of nations
6 that benefit from a reliable flow of foreign capital
7 by—

8 (A) restricting the access to the United
9 States capital markets of judgment evading for-
10 eign states and their state-owned corporations;

11 (B) requiring that such persons be warned
12 of the dangers of investing in, lending to, or
13 doing business with such states and state-owned
14 corporations; and

15 (C) subjecting to congressional scrutiny re-
16 quests for aid made by judgment evading for-
17 eign states to the United States Government;
18 and

19 (3) to seek to protect the authority of the
20 United States courts by preventing judgment evad-
21 ing foreign states from willfully flouting the judg-
22 ments of those courts.

1 **SEC. 6. BAR ON ACCESS TO UNITED STATES LENDERS AND**
2 **INVESTORS.**

3 (a) MEASURES WITH RESPECT TO JUDGMENT EVAD-
4 ING FOREIGN STATES.—The Securities and Exchange
5 Commission shall—

6 (1) take all necessary measures to deny every
7 judgment evading foreign state access to United
8 States capital markets, including the ability, directly
9 or indirectly, to borrow money or sell securities in
10 the United States, unless the proceeds of such bor-
11 rowing or securities issuance are to be used, in the
12 first instance, to satisfy in full all final judgments
13 entered against such judgment evading foreign state
14 that form the basis of the state’s designation as a
15 judgment evading foreign state; and

16 (2) require that all periodic filings made by the
17 judgment evading foreign state with the Securities
18 and Exchange Commission under the securities laws
19 bear the following legend prominently on the cover
20 page: “WARNING: THIS REPORT IS SUB-
21 MITTED BY A FOREIGN STATE THAT HAS
22 BEEN DETERMINED BY THE UNITED
23 STATES DEPARTMENT OF THE TREASURY
24 TO BE A JUDGMENT EVADING FOREIGN
25 STATE BASED UPON ITS FAILURE TO SAT-

1 ISFY OUTSTANDING UNITED STATES
2 COURT JUDGMENTS.”.

3 (b) MEASURES WITH RESPECT TO STATE-OWNED
4 CORPORATIONS OF JUDGMENT EVADING FOREIGN
5 STATES.—If any judgment evading foreign state remains
6 in default on any final judgment for more than 3 years,
7 irrespective of whether such judgment became final before
8 the date of the enactment of this Act, the Securities and
9 Exchange Commission shall—

10 (1) take all necessary measures to deny any
11 state-owned corporation of a judgment evading for-
12 eign state access to the United States capital mar-
13 kets, including the ability to issue debt, equity or
14 other securities, or borrow money, unless the pro-
15 ceeds of such borrowing of securities issuance are to
16 be used, in the first instance, to satisfy in full all
17 final judgment against its parent judgment evading
18 foreign state; and

19 (2) require that all periodic filings made by
20 each state-owned corporation of a judgment evading
21 foreign state with the Securities and Exchange Com-
22 mission under the securities laws bear the following
23 legend prominently on the cover page: “WARNING:
24 THIS REPORT IS SUBMITTED BY A STATE-
25 OWNED CORPORATION OF A FOREIGN

1 STATE THAT HAS BEEN DETERMINED BY
2 THE DEPARTMENT OF THE TREASURY TO
3 BE A JUDGMENT EVADING FOREIGN STATE
4 BASED UPON ITS FAILURE TO SATISFY
5 OUTSTANDING UNITED STATES COURT
6 JUDGMENTS.”.

7 **SEC. 7. REQUESTS FOR AID OR ASSISTANCE FROM JUDG-**
8 **MENT EVADING FOREIGN STATES.**

9 (a) BILATERAL ASSISTANCE.—Whenever any pro-
10 posal is made to a department, agency, or other instru-
11 mentality of the United States Government to extend aid,
12 a loan, or any other form of assistance to a judgment
13 evading foreign state, the head of the department, agency,
14 or other instrumentality may consider the proposal only
15 if it bears prominently the legend described in subsection
16 (c).

17 (b) MULTILATERAL ASSISTANCE.—Whenever any
18 proposal is made to an international organization to ex-
19 tend aid, a loan, or any other form of assistance to a judg-
20 ment evading foreign state, the Secretary of State shall
21 provide prompt notice of such proposal to the Congress.
22 Such notice shall bear prominently the legend described
23 in subsection (c).

24 (c) LEGEND DESCRIBED.—The legend of a proposal
25 referred to in subsection (a) and the legend of a notice

1 referred to in subsection (b) is the following: “REQUEST
2 FOR GRANT-IN-AID OR LOAN BY A JUDGMENT
3 EVADING FOREIGN STATE.”.

4 **SEC. 8. REPORTS; RECOMMENDATIONS OF ADDITIONAL**
5 **MEASURES.**

6 (a) ANNUAL REPORTS TO CONGRESS.—Not later
7 than January 31 of each year, the Secretary of the Treas-
8 ury shall provide a report, in writing, to the Congress
9 identifying each judgment evading foreign state, and, for
10 each such judgment evading foreign state—

11 (1) quantifying the impact on the United States
12 economy, and cost to United States taxpayers, of the
13 unsatisfied final judgments outstanding against the
14 judgment evading foreign state; and

15 (2) describing all measures that the Secretary
16 of the Treasury and the Securities and Exchange
17 Commission have taken in the preceding year to
18 carry out this Act.

19 (b) CONSIDERATION OF DOCUMENTS AND OTHER IN-
20 FORMATION.—The Secretary of the Treasury may con-
21 sider documents and other information received from third
22 parties and from judgment evading foreign states in pre-
23 paring each report under subsection (a).

24 (c) TERMINATION OF DESIGNATION.—At such time
25 as the Secretary of the Treasury determines that any

1 judgment evading foreign state no longer qualifies as a
2 judgment evading foreign state, the Secretary shall so cer-
3 tify to the Congress no later than in the next annual re-
4 port to Congress under subsection (a), at which time the
5 requirements and prohibitions under this Act shall no
6 longer apply to such former judgment evading foreign
7 state, or to any state-owned corporation of such judgment
8 avoiding foreign state. The Secretary may consider docu-
9 ments and other information received from third parties
10 and from the judgment evading foreign state in making
11 this determination.

12 (d) OTHER PUBLIC REPORTS TO INCLUDE INFORMA-
13 TION ABOUT JUDGMENT EVADING FOREIGN STATES.—
14 The Secretary of State, the Secretary of the Treasury, and
15 the Secretary of Commerce shall each reference the find-
16 ings of the Secretary of the Treasury from the Secretary's
17 most recent annual report to Congress under subsection
18 (a) relating to the unsatisfied final judgments outstanding
19 against the judgment evading foreign state in every report
20 prepared for the public relating to the country risk or in-
21 vestment climate of such judgment evading foreign state.

22 (e) ADDITIONAL MEASURES.—The Secretary of the
23 Treasury shall recommend to the Congress in writing ad-
24 ditional measures to carry out the purposes of this Act.

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