

United States Imposes Sanctions on Russia; More Significant Sanctions Possible

IN SHORT

The Situation: The U.S. government imposed initial sanctions on Russia under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991. The sanctions relate to the March 2018 attempted assassination of former Russian intelligence officer Sergei Skripal and his daughter.

The Result: The initial sanctions likely will not have a significant effect on the restrictions already in place relating to dealings with Russia.

Looking Ahead: More significant sanctions must be imposed if the U.S. government finds that Russia does not meet certain conditions in the next three months, absent a waiver by the President of the United States.

The U.S. government imposed limited sanctions on Russia today in response to the alleged assassination attempt of former Russian intelligence officer Sergei Skripal and his daughter in the United Kingdom. The attempted assassination involved the use of a Novichok nerve agent. The U.S. Department of State announced the sanctions, which are imposed under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 ("CBW Act"), on August 8.

The President is required under the CBW Act to impose certain sanctions when it is determined that a foreign government has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals (22 U.S.C. § 5601 et seq.). An additional set of sanctions, which are more far-reaching, could be imposed within three months unless the President determines that Russia has undertaken certain steps to remediate the circumstances.



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Initial Sanctions

The initial set of sanctions under the CBW Act include:

- Termination of foreign assistance, except for urgent humanitarian assistance and food or other agricultural commodities or products;
- Termination of arms sales;
- Termination of foreign military financing
- Denial of U.S. government credit or other financial assistance; and
- Termination of all exports of items controlled on the Commerce Control List for national security reasons.

In implementing the initial set of sanctions, the U.S. Department of State determined that it is essential to U.S. national security interest to waive the application of certain of the sanctions under the CBW Act (83 Fed. Reg. 43723 (August 27, 2018)). Specifically, the U.S. Department of State waived the sanction regarding termination of foreign assistance. Further, the U.S. Department of State will continue deciding licenses on a case-by-case basis using preexisting policy considerations for exports and re-exports: (i) related to safety of flight of civil fixed-wing passenger aviation activities; (ii) related to space flight activities in support of government space cooperation and commercial space launches; (iii) to Russian nationals in the United States (deemed exports); and (iv) to commercial end-users in Russia. In contrast, licenses for exports and re-exports of items to Russian state-owned or state-funded enterprises will be reviewed on a case-by-case basis, subject to a "presumption of denial" policy. Finally, the U.S. Department of State waived sanctions with regard to exports and re-exports eligible for certain license exceptions under the Export Administration Regulations, including License Exception Encryption Commodities, Software, and Technology and License Exception Civil End-Users.

These sanctions do not appear to significantly affect restrictions in place. The waivers result in several areas following existing practice. Further, other actions, such as export licensing changes not affected by

the waivers, do not dramatically change existing requirements as national security-sensitive goods and technology destined for Russia are currently subject to highly scrutinized licensing determinations. Restrictions in place already prohibit the sale of arms to Russia absent an export license.

Potential for Additional Sanctions

The CBW Act requires the imposition of a second set of broad sanctions on Russia in three months unless the President determines that the Russian government: (i) is no longer using chemical or biological weapons in violation of international law; (ii) has provided reliable assurances that it will not engage in any such activities in the future; and (iii) is willing to allow on-site inspections by the United Nations or other observers to ensure that it is not engaging in such activities (22 U.S.C. § 5605(b)(1)). If such conditions are not met, the President is required to impose at least three of the following six sanctions:

- Opposing multilateral development bank assistance to the Russian government;
- Prohibiting U.S. banks from making loans or providing credit to the Russian government;
- Prohibition of all exports of all U.S. items to Russia (excluding food and other agricultural items);
- Prohibition of all imports of goods from Russia, including petroleum products;
- Downgrading or suspending diplomatic relations with the Russian government; or
- Suspending (and possibly terminating) air transportation services by Russian government airlines to or from the United States.

Imposing the import and additional export restrictions would effectively make Russia an embargoed jurisdiction similar to Cuba, Iran, North Korea, Syria, and the Crimea region of Ukraine. Accordingly, the President may take a more measured approach and impose the less restrictive sanctions, such as additional financial restrictions or diplomatic expulsions.

Any of the CBW Act sanctions described above can be waived if the President determines and certifies to Congress that the waiver is essential to the national security interests of the United States or that there has been a fundamental change in the leadership and policies of the Russian government.

Jones Day will continue to monitor developments and provide updates.

THREE KEY TAKEAWAYS

1. Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, the President was required to impose this initial set of sanctions. The administration chose to waive certain of the initial sanctions included in the act.
2. The sanctions imposed today likely will not substantially change business dealings with Russia, given the high level of control already in place regarding the export of defense and other sensitive materials to Russia.
3. There is a menu of sanctions from which the President may choose if Russia does not meet certain conditions regarding its use of chemical or biological weapons. While certain of the sanctions could result in a full embargo on Russia, the President may impose less restrictive sanctions.



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