

New Chemical Weapons Sanctions Against Russia Could Have Far-Ranging Effects

August 21, 2018

On August 6, 2018, the U.S. Department of State made a formal determination that Russia used chemical or biological weapons against Sergei Skripal and his daughter Yulia Skripal, who were poisoned in Salisbury, England, earlier this year. This determination will trigger two rounds of sanctions under the [Chemical and Biological Weapons Control and Warfare Elimination Act of 1991](#) (the “CBW Act”).¹

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& Plimpton**

The sanctions mandated by the CBW Act could go far beyond the list-based asset freezes and sectoral restrictions and the focused export controls that the U.S. has imposed against Russia to date. If applied to their full extent, the sanctions are likely to affect a significant amount of trade between the U.S. and Russia.

Companies trading with Russia and Russian companies engaged in cross-border transactions should consider reviewing any sanctions provisions in their **loan agreements and other contracts**. Such agreements sometimes provide that operations in a “sanctioned country” will trigger the lender’s right to accelerate the loan or other negative consequences. Although these clauses typically will not be triggered by the first tranche of CBW Act sanctions, the second tranche of sanctions specified in the CBW Act could cause Russia to become a “sanctioned country” under some contractual definitions of that term. These clauses typically would have been agreed at a time when the only countries subject to U.S. countrywide sanctions were Cuba, Iran, North Korea and Syria (and formerly Libya, Myanmar and Sudan), and it was not anticipated that Russia could become a sanctioned country.

The first tranche of sanctions will take effect on publication in the Federal Register. The U.S. Department of State has said in a [press statement](#) that publication is expected on August 22, 2018, following a 15-day congressional notification period.

Under the CBW Act, the first tranche of sanctions will include, most significantly, a ban on exports to Russia of security-sensitive goods and technology, other than exports

¹ Although the CBW Act refers to the “President” as making this determination, all presidential functions under the relevant parts of the CBW Act [have been delegated](#) to the Secretary of State or, in some cases, the Secretary of the Treasury or the Secretary of Commerce.

under existing contracts. This applies to items that are export-controlled for reason “NS” on the [Commerce Control List](#). According to a State Department [press briefing](#), the U.S. Department of Commerce will begin applying a presumption of denial to these license applications, rather than considering them on a case-by-case basis as it currently does. But exports related to space flight, civil aviation and some other civilian commercial activities will continue to be reviewed on a case-by-case basis. Licenses also are expected to remain available for deemed exports to Russian nationals working in the U.S. and for exports to wholly owned Russian subsidiaries of non-Russian companies.

The remaining first-tranche sanctions mandated by the CBW Act are less likely to have a significant impact. These include the following:

- Termination of U.S. aid to Russia under the Foreign Assistance Act except for urgent humanitarian help, food and other agricultural products; however, the State Department has stated that it will exercise its authority to waive these sanctions;
- Termination of U.S. export to Russia of defense articles, defense services, military design and construction services, termination of related export licenses;
- Termination of U.S. arms sales financing for Russia; and
- Denial of U.S. government credit or financial assistance to Russia, other than under existing contracts.

The second tranche of sanctions takes effect in three months unless the U.S. government determines that Russia (1) has stopped using chemical or biological weapons, (2) has provided reliable assurances that it will not engage in those activities in the future, and (3) is willing to allow on-site inspections by United Nations observers or other internationally recognized observers, or other reliable means of verification exist.

Under the CBW Act, the second round of sanctions will consist of three or more sanctions chosen by the U.S. government from the following “menu”:

- U.S. opposition, at international financial institutions, to the extension of any new financial or technical assistance to Russia;
- prohibition of loans to the Russian government by U.S. banks (except loans to purchase food or other agricultural products, and loans under existing agreements);
- prohibition of all exports of U.S. goods or technology to Russia (except exports of food and other agricultural products, and exports under existing agreements);

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- restrictions on the importation into the U.S. of any articles, possibly including petroleum or petroleum products, that are grown, produced or manufactured in Russia (except imports under existing agreements);
 - downgrading or suspension of diplomatic relations between the U.S. and Russia; and
 - suspension or revocation of the authority of Russian state-owned or -controlled air carriers to provide transportation to or from the U.S.

As with the first round of sanctions, the U.S. government has the authority to waive any of these sanctions on national security grounds, except for the suspension or downgrading of diplomatic relations. The State Department has not stated which of the second-round sanctions it intends to impose, nor has it indicated whether or how broadly it will waive these sanctions. Depending on what sanctions are imposed, Russia could become a “sanctioned country” under contractual definitions that use terms such as “import embargo”, “export embargo”, “restrictions on financing” or “sanctions on the entire country or territory.”

Sanctions removal. Any CBW Act sanction may be removed by the U.S. government one year after the imposition of the first tranche, if the government determines that Russia (1) is not preparing to use, and has provided reliable assurances that it will not, use chemical or biological weapons in violation of international law, (2) is willing to allow on-site inspections by international observers, and (3) makes restitution to victims of its use of chemical or biological weapons.

Individual sanctions. The U.S. government also has the authority to impose sanctions on individuals and entities who engage in the use of chemical or biological weapons. For example, in 2017, the U.S. government [blocked the assets](#) of two individual Russian nationals alleged to be involved in the 2006 poisoning of Alexander Litvinenko in London, England. To date, the U.S. has not imposed such sanctions in connection with the Skripal poisoning.

Further sanctions. The U.S. Congress is considering proposals for additional sanctions against Russia. We will provide a further update if and when any of those proposals become law.

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Please do not hesitate to contact us with any questions.

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WASHINGTON, D.C.

Satish M. Kini
smkini@debevoise.com

Robert T. Dura
rdura@debevoise.com

MOSCOW

Alan Kartashkin
akartashkin@debevoise.com

Dmitry Karamyslov
dakaramyslov@debevoise.com

Daria Serebrova
daserebrova@debevoise.com

NEW YORK

Carl Micarelli
cmicarelli@debevoise.com

David G. Sewell
dsewell@debevoise.com

Zila R. Acosta-Grimes
zracosta@debevoise.com

LONDON

Jane Shvets
jshvets@debevoise.com

Konstantin Bureiko
kbureiko@debevoise.com