

US Imposes New Sanctions in Response to the Skripal Assassination Attempt

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On August 27, 2018, the U.S. Department of State implemented the first tranche of new sanctions on Russia under the Chemical and Biological Weapons Control and Warfare Elimination Act (the CBW Act). The enactment of these measures had been expected since the August 8, 2018, [State Department announcement](#) that the Novichok nerve agent poisoning of Sergei and Yulia Skripal in the United Kingdom in March 2018 constituted the use by Russia of chemical or biological weapons in violation of international law. The CBW Act requires the president to impose specified sanctions, in two phases, following such a determination. The first tranche of sanctions, which took effect on August 27, 2018, will remain in place for a minimum of one year. The second phase of sanctions will be implemented in November 2018, three months after the first phase, if Russia does not satisfy certain conditions.

Notably, many sanctions imposed under the CBW Act generally do not apply to activities conducted pursuant to contracts predating the president's determination regarding the use of chemical or biological weapons. However, there are certain exceptions to this rule, including activities related to the arms sales and foreign military financing sanctions described below. Further, the president has the authority to determine on a case-by-case basis that the sanctions will apply to specific pre-existing contracts if the performance of such contracts would have the effect of assisting Russia in using chemical or biological weapons in violation of international law.

While many European Union member states have strongly condemned the March 2018 assassination attempt and expelled dozens of Russian diplomats in response to the attack,¹ the European Union has not, to date, prepared new sanctions on Russia in response to the Novichok incident.

Phase One Sanctions

On August 27, 2018, the following sanctions against Russia under the CBW Act took effect and will remain in place for at least one year and until further notice:

- **Termination of Arms Sales.** Termination of (1) sales to Russia under the Arms Export Control Act of any defense articles, defense services, or design and construction services, and (2) licenses for the export of items appearing on the U.S. Munitions List of the International Traffic in Arms Regulations. The State Department has waived the application of this sanction with respect to the issuance of licenses in support of government space cooperation and commercial space launches. Such licenses will be issued on a case-by-case basis consistent with export licensing policy for Russia prior to the enactment of these new sanctions.
- **Arms Sales Financing.** Termination of all foreign military financing for Russia under the Arms Export Control Act.
- **Denial of U.S. Government Credit or Other Financial Assistance.** Denial to Russia of any credit, credit guarantees or other financial assistance by the U.S. government, including by the Export-Import Bank.
- **Exports of National Security-Sensitive Goods and Technology.** Prohibition on the export or re-export to Russia of any goods or technology subject to national security controls on the Commerce Control List. The State Department has waived this

¹ See, e.g., "[Western Allies Expel Scores of Russian Diplomats Over Skripal Attack](#)," The Guardian.

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prohibition with respect to exports and re-exports to Russia of national security-controlled items subject to the Export Administration Regulations (EAR) in the following circumstances:

- **License Exceptions.** Exports and re-exports of goods or technology satisfying all the criteria for eligibility under the following EAR license exceptions:
 - GOV: Export or re-export of certain items for international nuclear safeguards, government agencies or personnel, international inspections under the Chemical Weapons Convention, and the International Space Station;
 - ENC: Export or re-export of certain encryption commodities, software and technology;
 - RPL: Export or re-export of certain one-for-one replacement parts, components, accessories and attachments;
 - BAG: Temporary export of personal baggage for individual international travel;
 - TMP: Temporary export or re-export for specified purposes (*e.g.*, news media reporting or tools of trade);
 - APR: Specified permissive re-exports of a limited set of items among certain countries;
 - CIV: Export or re-export of items only restricted for national security reasons to civil end-users and for civil end uses;
 - AVS: Departure from the U.S. of civil aircraft on temporary sojourn in the U.S. and the export of certain equipment for civil aircraft and spacecraft.
- **New Licenses.** The Department of Commerce will grant new licenses for the following categories of exports and re-exports of goods and technology on a case-by-case basis consistent with export licensing policy for Russia in effect prior to the enactment of the CBW Act sanctions:
 - Exports and re-exports necessary for the safety of flight of civil fixed-wing passenger aviation;
 - Deemed exports and re-exports (release of software or technology) to Russian nationals located in the United States;
 - Exports and re-exports to wholly owned subsidiaries of U.S. companies located in Russia;

- Exports and re-exports in support of government space cooperation and commercial space launches; and
 - Exports and re-exports for commercial end-users and civil end uses in Russia.
- **Russian State-Owned and State-Funded Enterprises.** The Department of Commerce will review license applications for exports and re-exports to Russian state-owned or state-funded enterprises on a case-by-case basis, subject to a “presumption of denial” policy.

Although the termination of foreign assistance to Russia under the Foreign Assistance Act is another sanction mandated by the CBW Act in the first phase, the State Department has exercised its authority to waive the application of this sanction in its entirety.

Phase Two Sanctions

The CBW Act mandates that the president impose a second phase of sanctions if certain conditions are not met within three months of the initial determination regarding Russia’s use of chemical or biological weapons. To avoid the second phase of sanctions, the president must certify to Congress that the Russian government (1) no longer uses chemical and biological weapons in violation of international law or against its own nationals, (2) has provided reliable assurances it will not do so again in the future, and (3) has agreed to on-site inspections by United Nations observers or a similar verification.

Absent such a certification by the president, in November 2018, the president, after consultation with Congress, must select and impose three or more sanctions on Russia from the following menu of six sanctions options:

1. The U.S. will oppose the extension of loans or other financial or technical assistance to Russia by international financial institutions (*i.e.*, multilateral development banks);
2. The U.S. will prohibit any U.S. bank from making any loan or providing any credit to the government of Russia (except for the purpose of purchasing food or other agricultural commodities and products);
3. The U.S. will prohibit the export of all goods and technology to Russia (excluding food and other agricultural commodities and products);

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4. The U.S. will impose restrictions on the importation into the United States of articles (which may include petroleum or petroleum products) that “are the growth, product, or manufacture” of Russia;
5. The president will downgrade or suspend diplomatic relations between the U.S. and Russia; and
6. The U.S. will impose restrictions on Russian government-owned or -controlled air carriers operating in the United States.

These sanctions range from diplomatic maneuvers to a trade embargo that could have significant global commercial implications, well beyond those of the sanctions in the first tranche. However, the president has complete discretion to select the three sanctions to impose and may tailor the individual measures via waivers, as done in the first phase. Nevertheless, it is doubtful that Russia would agree to the conditions mandated in the CBW Act for preventing the second tranche of sanctions. As a result, a new round of measures on Russia in November 2018 is highly likely.

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