

# United States to impose new sanctions on Russia for use of nerve agent on former Russian spy

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On 8 August, the U.S. Department of State [announced](#) that new sanctions would be imposed on Russia pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act). The sanctions relate to the Russian government's alleged attempt to assassinate a former Russian intelligence operative and his daughter now living in the United Kingdom using a nerve agent. These sanctions will be made public on or around 22 August through a notice in the *Federal Register*.

Under the CBW Act, upon the United States determining that a foreign government has used chemical or biological weapons against international law or against their own nationals, the president is required to immediately impose sanctions on the foreign country (round 1 of the sanctions). If, after 90 days, the offending government does not remediate its underlying conduct, then the president is required to impose additional sanctions on the foreign country (round 2 of the sanctions). The statute provides the president with waiver authority with regard to the imposition of these sanctions in the interest of national security.

## Key takeaways

- Round 1 (on/around 22 August)

It is expected that these sanctions will involve denial of licenses for the export or re-export of national security (NS)-controlled items to Russia, with certain exceptions. Given that exports of NS-controlled items to Russia currently require an export license from the Bureau of Industry and Security of the U.S. Commerce Department (BIS) and such license applications are closely scrutinized, we do not anticipate a significant impact on exports to Russia due to this change in licensing policy.

Nevertheless, there are other significant ramifications of the statute being strictly implemented. For example, in terminating arms sales, the U.S. government will prohibit the sale of any U.S. defense articles, defense services, or design and construction services to Russia, with certain exceptions. Separately, all departments, agencies, or instrumentalities of the U.S. government,

including the Export-Import Bank, will be prohibited from extending any credit, credit guarantees, or other financial assistance to Russia.

- Round 2 (on/around 22 November)

To reiterate, these sanctions are not automatically triggered after 90 days. This depends on whether Russia has remediated its chemical weapons behavior as prescribed under the statute. That said, should the United States impose the export and import restrictions available to the president after 90 days, these broader restrictions would result in Russia essentially becoming an embargoed country and would have a significant impact on Western companies doing business in Russia. The president also could prohibit U.S. financial institutions from making any loans to Russian entities. The resulting flight of Western capital from Russia could exact a major toll on the Russian economy.

Whether the president would eschew the import and export sanctions entirely or exercise waivers to mitigate their impact remains to be seen.

Following is additional detail on rounds 1 and 2 of the sanctions set forth in the CBW Act.

### **Round 1 (on/around 22 August)**

According to the State Department announcement, the United States determined on 6 August that the government of the Russian Federation has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its own nationals. As a result, under the CBW Act, the president is required to immediately terminate foreign assistance, arms sales, arms sales financing, extension of U.S. credit, and the export of certain NS-controlled items to Russia.

The State Department [explained](#) at a press briefing on 8 August that the 22 August sanctions will involve a presumption of denial for "all national security sensitive goods or technologies that are controlled" by the BIS under the Export Administration Regulations. These goods are currently subject to a case-by-case license determination. The State Department further explained that the BIS would consider the export of U.S.-origin goods with "purely commercial end users for civilian end uses" on a case-by-case basis.

In addition, the State Department explained that the U.S. government would waive the mandatory sanctions on the export of U.S.-origin items intended for U.S.-Russian space flight activities and the export of NS-controlled items intended for the commercial passenger aviation industry in Russia. The BIS will consider licensing these items on a case-by-case basis. The U.S. government will also waive the mandatory sanctions on foreign assistance to Russia.

### **Round 2 (on/around 22 November)**

Under the CBW Act, if, after 90 days of having imposed the first round of sanctions, the president cannot certify to Congress that the government of the foreign country has undertaken certain corrective action, then he is required to impose additional sanctions on the foreign country, i.e., Russia. The certifications are as follows

- the government of the foreign country is no longer using chemical or biological weapons in violation of international law or using lethal chemical or biological weapons against its own nationals;
- that government has provided reliable assurances that it will not in the future engage in any such activities; and

- that government is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers, or if other reliable means exist, to ensure that the government in question is not using chemical or biological weapons in violation of international law and is not using lethal chemical or biological weapons against its own nationals.

The supplemental sanctions menu of the CBW Act consists of the following options, of which the president must choose at least three

- opposing the extension of multilateral development bank assistance;
- prohibiting U.S. banks from lending or providing credit to the government of the foreign country (except loans for food or agricultural commodities);
- prohibiting the export to that country of all other goods and technology (except food or agricultural commodities);
- restricting the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country;
- downgrading or suspending diplomatic relations; or
- termination of carrier landing rights (e.g., Aeroflot's ability to operate flights to/from the United States would be impacted).

The CBW Act provides the president with the authority to waive the sanctions imposed on the foreign country according to the following guidelines

- in order to waive any of the sanctions *other* than import restrictions and the downgrading or suspending of diplomatic relations, the president may do so upon determining—and certifying to Congress 15 days before going into effect—that the waiver is essential to national security;
- in order to waive the import restrictions, the president may do so upon determining—and certifying to Congress 15 days before going into effect—that the waiver is essential to national security; or
- in order to waive any of the sanctions, the president may do so upon determining—and certifying to Congress at least 20 days before going into effect—that there has been a fundamental change in the leadership and policies of the government of that country.

In the event that the president decides to exercise the waiver authority as described above, the president's certification to Congress is required to include a report fully articulating the rationale and circumstances which led the president to exercise that waiver authority. The report is required to include a description of the steps that the government of that country has taken to reverse its chemical weapons activity and that the government is also making restitution to the victims of its chemical weapons activity.

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