

State Department Announces New Sanctions on Russia, Could Lead to Near Trade Embargo

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After some nudging by Congress, the U.S. Department of State announced new sanctions on Russia yesterday stemming from the administration's determination that Russia used a "Novichok" nerve agent in an attack against ex-spy Sergei Skripal and his daughter in the United Kingdom. While the initial set of sanctions will likely have more limited practical effects, the second round of sanctions—which could be imposed in approximately three months—potentially could cut off Russia from doing business in or with the United States.

The U.S. government made its determination that Russia used chemical or biological weapons in violation of international law or used lethal chemical or biological weapons against its own nationals under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act). The initial set of statutory sanctions, which likely will go into effect in the next two weeks or so, include the following restrictions:

- Termination of assistance under the Foreign Assistance Act of 1961 (except for urgent humanitarian assistance or agricultural commodities or products);
- Termination of/prohibition on arms sales and arms sales financing;
- Denial of U.S. government credit, credit guarantees, or other financial assistance, including from the Export-Import Bank; and
- Prohibition on exports of other national security-sensitive goods and technology.

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Although the U.S. government already generally denies export licenses for high technology items that could contribute to Russia's military capabilities and limits foreign assistance to Russia, the new sanctions further clamp down on exports of certain dual-use goods and technology. National security-controlled products that were subject to a case-by-case export license review policy now will be subject to a presumption of denial. The administration also can and reportedly intends to waive certain of the sanctions, including to continue to permit U.S. foreign assistance to non-governmental entities in Russia and space flight cooperation and to limit ramifications for Russian wholly owned subsidiaries of U.S. companies.

The determination under the CBW Act and the preliminary sanctions start the clock, as Russia now must satisfy the following conditions within a three-month period to avoid even harsher sanctions: (1) it is no longer using chemical or biological weapons in violation of international law or against its own nationals; (2) it has provided reliable assurances that it will not do so in the future; and (3) the government is willing to permit on-site inspections by United Nations (UN) or other internationally recognized observers, or other reliable means exist, to ensure that the Russian government is not using chemical or biological weapons in violation of international law or against its own nationals. The third requirement likely will serve as the most challenging hurdle, though the CBW Act includes some wiggle room that would not necessarily require Russia to agree to UN inspections.

If the President cannot certify that Russia has satisfied each of the three conditions above, the second, potentially sweeping "menu-based" sanctions will be triggered, where the President must impose *at least three* of the following restrictions:

- U.S. government opposition to multilateral development bank assistance to Russia;
- Prohibition on nearly all U.S. bank loans or credit to the Russian government;
- Prohibition on exports of goods and technology to Russia (except agricultural commodities and products);
- Restrictions on imports from Russia;
- Suspension or downgrading of diplomatic relations with Russia; and
- Suspension of the authority of a foreign carrier owned or controlled by the Russian government to engage in foreign air transportation to or from the United States.

Should the President choose to impose broad export and import prohibitions, this would for all practical purposes render Russia an embargoed country. However, there are less restrictive options available, and, again, the President has the authority to waive the sanctions in the interests of U.S. national security. The CBW Act also includes a safe harbor that would prohibit, for example, the imposition of the export or import sanctions on any activity conducted pursuant to a contract or international agreement entered into prior to the CBW Act determination unless the President determines that performance of the agreement would assist Russia's chemical or biological weapons activities.

The administration's decision to impose new sanctions on Russia under the CBW Act comes amid heightened bipartisan criticism in Congress of what many view as the administration's failure to adequately punish Russia for its continuing interference in U.S. elections, cyberattacks on domestic infrastructure, and destabilizing activities in Ukraine and Syria. Earlier this month, Senators Lindsey Graham (R-SC) and Bob Menendez (D-NJ) introduced the *Defending American Security from Kremlin Aggression Act*, which, among other things, would prohibit transactions involving Russian sovereign debt and energy projects supported by Russian state-owned entities, impose new sanctions on Russian political figures and oligarchs, and require the State Department to determine whether Russia meets the criteria for designation as a state sponsor of terrorism. A separate bill introduced by Senators Marco Rubio (R-FL) and Chris Van Hollen (D-MD) earlier this year would impose sanctions on major sectors of the Russian economy (including its finance, energy, and defense sectors) if the Director of National Intelligence determines that Russia has interfered in a U.S. federal election.