

US to impose new Russia sanctions following chemical weapons determination

August 14, 2018

On August 8, 2018, the US State Department announced a determination¹ that the Government of the Russian Federation used chemical weapons in violation of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (“CBW Act”)², in connection with the poisoning of Sergei and Yulia Skripal. This finding triggers at least one round of sanctions and potentially a second, even more stringent round, if Russia does not meet certain conditions within three months.

Notwithstanding the political significance, it remains to be seen whether the first round of CBW Act sanctions will have a material commercial impact. Existing US sanctions and trade controls already restrict US government financial support for Russia and exports and reexports to Russia of items for use in its energy and defense sectors, making the near term impact of these additional sanctions uncertain.

The potential second round of CBW Act sanctions would be far more severe and impactful, given that they could include a general ban on exports and reexports to Russia, a downgrade in diplomatic relations, and a ban on Aeroflot flying to the United States. Close attention to the political and diplomatic developments related to this new designation will be critical for businesses with operations in Russia or trade ties to the country.

First round of sanctions

The finding by the US that Russia used chemical weapons triggered a 15-day congressional notification period, in advance of a first round of CBW Act sanctions. According to the State Department, this first round is expected to become effective on or around August 22, 2018.

Among other things, these new sanctions will prohibit or severely restrict any export or reexport to Russia of US-origin items that have national security sensitivities. Currently, such exports or reexports are subject to case-by-case consideration by the US Commerce Department. However, when the new CBW Act sanctions go into effect, the Commerce Department will adopt a general policy of denial, although the State Department has indicated that there will be some exceptions (i.e., a continuation of case-by-case consideration). For example, in a press briefing, the State Department said that the new general policy of denial will not apply to exports and reexports for space projects in which the US and Russia collaborate and for items necessary for commercial passenger aviation safety. The scope of these exceptions and the precise manner of implementing these new restrictions remain to be clarified by the Commerce Department.

The first round sanctions also include several other provisions that, as a whole, curtail the ability of Russia to benefit from US government financial assistance and US-origin arms. Specifically, these other first round sanctions (i) terminate foreign assistance from the US to Russia, except for urgent humanitarian assistance and food or other agricultural products or commodities; (ii) terminate US arms sales and financing for foreign military sales to Russia,

and (iii) deny US government credit or other financial assistance to Russia, including Export-Import Bank financing.

Potential second round of sanctions

The initial determination by the State Department under the CBW Act automatically triggers a second round of mandatory sanctions, that must be implemented within three months unless the President certifies to Congress that Russia is no longer using chemical weapons, has provided reliable assurances that it will not do so again, and is willing to allow on-site inspections.

Absent this certification, the President is required to impose at least three penalties from the following menu:

- **International financial institutions.** Oppose the extension of any loan or financial or technical assistance to Russia by international financial institutions;
- **US bank financing.** Prohibit US banks from making any loan or providing any credit to the Russian Government, except for the purchase of food or other agricultural commodities or products;
- **General US export embargo.** Prohibit all exports and reexports to Russia of US-origin items, except for food and other agricultural commodities or products;
- **US import restrictions.** Restrict imports into the United States of Russian-origin items;
- **Political consequences.** Downgrade or suspend diplomatic relations; and
- **Air travel.** Suspend the authority of any air carriers owned or controlled by the Russian government, such as Aeroflot, to fly to or from the United States.

Implications

As noted above, the commercial impact of the first round of sanctions remains to be seen, though many commentators predict it will not be material in light of pre-existing controls.

However, the second round sanctions appear likely to have a far greater impact, and the initial public reactions from Russia suggest that it may be unlikely to agree to provide the assurances required to avoid them.

Thus, while the CBW Act includes Presidential waiver authority and certain “grandfathering” for contracts that pre-date sanctions, now is the time to identify potential exposures to the types of transactions and business operations that could be affected by the second round penalties.

Additionally, it is important to note that the CBW Act sanctions are independent from the host of other US sanctions authorities targeting Russia - and there is growing, bipartisan movement in the US Congress to expand these other measures further still.

1. According to the State Department, the US made the determination on August 6, 2018, although it was only made public on August 8, 2018. For a transcript of the State Department's special briefing previewing the imposition of CBW Act sanctions, see <https://www.state.gov/r/pa/prs/ps/2018/08/285046.htm>.↵

2. Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, Pub. L. No. 102-182, 105 Stat. 1233, available at [https://www.congress.gov/bill/102nd-congress/house-bill/1724/text](https://www.congress.gov/bills/102nd-congress/house-bill/1724/text)↵

Your Key Contacts



Peter G. Feldman

Partner, Washington, DC

D +1 202 408 9226

peter.feldman@dentons.com



Jason M. Silverman

Partner, Washington, DC

D +1 202 496 7423

jason.silverman@dentons.com



Michael E. Zolanz

Partner, Washington, DC

D +1 202 408 9204

M +1 202 441 3901

michael.zolanz@dentons.com