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Russia, the Skripal Poisoning, and U.S. Sanctions

On August 6, 2018, Secretary of State Michael Pompeo determined that in March 2018 the government of Russia had used a chemical weapon in the United Kingdom in contravention of international law. When such a determination is made, U.S. law requires the President to impose economic and diplomatic measures that initially cut off foreign aid, arms sales, and export licenses for controlled goods, services, and technology, and ratchet up in intensity if certain conditions are not met within 90 days.

The United States also currently imposes sanctions against Russia for other reasons. See CRS In Focus IF10779, *U.S. Sanctions on Russia: An Overview*, and CRS Report R45415, *U.S. Sanctions on Russia*.

The Poisoning of Sergei and Yulia Skripal

On March 4, 2018, in Salisbury, United Kingdom, British citizen Sergei Skripal, a former Russian military intelligence officer and UK double agent, his daughter, and a police officer were exposed to a highly toxic and potentially lethal chemical weapon agent. In July 2018, British media reported that another British citizen died after she and her partner allegedly came into contact with a bottle containing the nerve agent. The development of this advanced nerve agent, known as a Novichok, is attributed to the Soviet-era military.

On March 15, 2018, President Trump and the leaders of the UK, France, and Germany issued a joint statement condemning the chemical attack, calling it “the first offensive use of a nerve agent in Europe since the Second World War” and its use by a state party “a clear violation of the Chemical Weapons Convention [CWC] and a breach of international law.”

On March 26, 2018, British Prime Minister Theresa May stated that “this unlawful use of force by the Russian state ... is a clear violation” of the CWC and “a breach of the UN Charter.” On April 12, 2018, the Trump Administration said it agreed “with the UK assessment that Russia is responsible for the attack on UK soil using a chemical weapon—either through deliberate use or through its failure to declare and secure its stocks of this nerve agent.”

The UK, the United States, and at least 26 other countries expelled over 150 Russian diplomats in response to the nerve agent attack. The British government expelled 23 diplomats. The Trump Administration expelled 60 officials it said were intelligence operatives and closed the Russian consulate in Seattle.

In April 2018, the Organization for the Prohibition of Chemical Weapons “confirm[ed] the findings of the United Kingdom relating to the identity” of the Novichok agent and noted that it “was of high purity.”

In September 2018, British authorities charged two individuals for the attack. British Prime Minister Theresa May said the suspects “are officers from the Russian military intelligence service, also known as the GRU.”

The CBW Control and Warfare Elimination Act

Secretary Pompeo’s finding that a foreign government has used a chemical agent as a weapon triggered the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act; title III, P.L. 102-182; 22 U.S.C. 5601 et seq.).

The CBW Act requires the President (who, in 1993, delegated CBW Act authorities to the Secretary of State) to terminate

- foreign assistance other than that which addresses urgent humanitarian situations or provides food, agricultural commodities, or agricultural products;
- terminate arms sales;
- terminate export licenses for U.S. Munitions List (USML) items;
- terminate foreign military financing;
- deny credit, credit guarantees, or other financial assistance from the U.S. government, including Export-Import Bank programs; and
- deny export licenses for goods controlled for national security reasons (the Commodity Control List, or CCL). [CBW Act, Section 307(a); 22 U.S.C. 5605(a)]

The CBW Act requires the imposition “forthwith” of these sanctions on determining that a chemical weapon has been used.

Second Round of Sanctions Within Three Months

Within three months after the initial determination (in this case, early November 2018), the CBW Act also requires the President to take further economic and diplomatic punitive steps unless he can determine and certify to Congress that Russia

- “is no longer using chemical or biological weapons in violation of international law or using lethal chemical or biological weapons against its own nationals,”
- “has provided reliable assurances that it will not in the future engage in any such activities, and”
- “is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers, or other reliable means exist, to ensure that that government 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....” [CBW Act, §307(b)(1); 22 U.S.C. 5605(b)(1)]

If the President does not certify on all these terms, he, in consultation with Congress, is required to

- oppose support to Russia in the international financial institutions;
- prohibit U.S. banks from making loans or providing credit other than that related to the purchase of food or other agricultural commodities or products;
- prohibit exports to Russia of all other goods and technology, except food and other agricultural commodities and products;
- restrict importation into the United States of articles that are of Russia-origin growth, product, or manufacture;
- downgrade or suspend diplomatic relations; and
- set in motion the suspension of foreign air carriers owned or controlled by Russia “to engage in foreign air transportation to or from the United States.” [§ 307(b)(2); 22 U.S.C. 5605(b)(2)]

A second round of sanctions could have a negative impact on the Russian economy, though it is impossible to predict to what extent, given both the possibility of waivers and how the executive branch might interpret the requirements of the CBW Act. In addition, the advance notice provided by the act that another round of sanctions is pending gives both U.S. and Russian entities engaged in bilateral trade and investment time to plan. For more on U.S. exposure to Russia’s economy, see CRS Report R43895, *U.S. Sanctions and Russia’s Economy*.

Lifting or Waiving CBW-Related Sanctions

The CBW Act authorizes the President to waive sanctions if he finds it essential to U.S. national security interests to do so and notifies Congress at least 15 days in advance. The President also may waive sanctions if he finds “that there has been a fundamental change in the leadership and policies of the government of that country, and if the President notifies the Congress at least 20 days before the waiver takes effect.”

On August 27, 2018, Assistant Secretary of State for International Security and Nonproliferation Christopher Ford, in announcing the first round of sanctions, invoked the national security waiver authority to allow for the continuation of

- foreign assistance;
- exports related to government space cooperation and commercial space launches; and
- export licensing for national security-sensitive goods and technology in specific categories related to civil aviation safety, deemed exports or reexports on a case-by-case basis, wholly owned U.S. subsidiaries operating in Russia, and commercial end-users for commercial purposes.

As of November 2018, the Secretary of State had not levied a new round of sanctions, nor had the President determined

that Russia meets the three conditions needed to avert sanctions. On November 6, 2018, the State Department informed Congress that it “could not certify that Russia met the required conditions” and intends “to proceed in accordance with the terms of the CBW Act, which directs the implementation of additional sanctions.”

CBW-related sanctions remain in place for at least a year. They may be removed only after the President determines and certifies to Congress that the three conditions stated above have been met and that Russia is making restitution to those affected by the use of the chemical weapon.

Contract Sanctity

The possible restrictions on U.S. exports, and U.S. government financial assistance or credit programs as part of the sanctions regime do not apply to existing contracts unless the President decides, on a case-by-case basis, that such a contract, if carried out, would assist the foreign government in using CBW in violation of international law or in using lethal CBW against its own people.

Existing contracts relating to foreign assistance, arms sales, or arms sales financing, on the other hand, are subject to sanctions, unless the President “determines that the application of such sanction would be detrimental to the national security interests of the United States.” [Sec. 307(e)(2); 22 U.S.C. 5605(e)(2)]

Background on the CBW Act and Earlier Determinations

In early 1991, the George H.W. Bush Administration declared that “[t]he proliferation of weapons of mass destruction may profoundly challenge our national security in the 1990s.” The United States set about strengthening international regimes dating back to the Geneva Protocol of 1925, a landmark international effort to deter the use of chem/bio weapons—through multilateral negotiations, treaties and cooperative export control groups, and legislation—to curtail the proliferation of chemical, biological, and nuclear weapons and missile technology. The CBW Act, including its amendments to laws related to U.S. exports and arms sales, was a part of this mix.

The CBW Act has been invoked on two previous occasions. On August 2, 2013, the State Department determined that the government of Syria had used chemical weapons but invoked national security waiver authority, stating that the decision to apply or waive sanctions “will be made on a case-by-case basis.”

On February 22, 2018, the Secretary of State determined that the government of North Korea was responsible for the lethal 2017 nerve agent attack on Kim Jong Nam, the half-brother of North Korean leader Kim Jong-un, in Malaysia. Sanctions that were largely redundant with restrictions already in place went into effect on March 5, 2018.

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