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Russia: The Navalny Poisoning, Chemical Weapons Use, and U.S. Sanctions

On March 2, 2021, U.S. Secretary of State Antony Blinken determined that in August 2020 the Russian government used a chemical weapon in an attack on opposition figure and anticorruption activist Alexei Navalny in violation of international law and against one of its own nationals. This finding triggered requirements under 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 Biden Administration imposed an initial round of sanctions, as required by the CBW Act.

The CBW Act requires the President to impose economic and diplomatic measures that could 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 March 2021 determination is the second time the United States has determined that Russia has used a chemical weapon and imposed sanctions under the CBW Act. The Trump Administration leveled two rounds of CBW Act sanctions in August 2018 and August 2019 in response to a March 2018 attack against British citizen Sergei Skripal and his daughter in the United Kingdom using an advanced nerve agent known as a Novichok. The United States also imposes sanctions against Russia for other reasons. For more, see CRS In Focus IF10962, *Russia, the Skripal Poisoning, and U.S. Sanctions*; CRS In Focus IF10779, *U.S. Sanctions on Russia: An Overview*; and CRS Report R45415, *U.S. Sanctions on Russia*.

The Poisoning of Alexei Navalny

In 2020, Russian authorities appeared to intensify a campaign to silence Navalny, a prominent opposition figure and one-time Moscow mayoral candidate. Navalny had been barred from competing in elections since 2013, after receiving a suspended sentence on what observers widely considered to be trumped up charges of embezzlement. Nevertheless, Navalny and his Anti-Corruption Foundation remained active in exposing government corruption and organizing antigovernment actions.

In August 2020, Navalny fell ill on a flight to Moscow. After public outcry, authorities allowed him to be evacuated to Germany for medical care. German officials later cited “unequivocal” evidence Navalny had been poisoned with a Novichok nerve agent, a chemical weapon developed by the Soviet Union and presumably accessible only to Russian state authorities. Other official international investigations reached similar conclusions. One independent investigation implicated several individuals linked to Russia’s Federal Security Service (FSB) in the attack.

In early 2021, on his return to Russia from Germany, Navalny was arrested, ostensibly for having missed parole check-ins related to his suspended sentence, including during his hospitalization abroad. Navalny was sentenced to serve 32 months of his suspended sentence and transferred to a penal colony. In June 2021, authorities ordered the closure of Navalny’s Anti-Corruption Foundation, calling it an “extremist” organization.

On March 2, 2021, the Biden Administration determined that Russian government agents were responsible for the attack on Navalny. The Department of State called the attack an “attempted assassination,” and the White House stated that the intelligence community assessed with “high confidence” that FSB officers were responsible for the Novichok attack. Russian authorities deny involvement in the attack or possession of chemical weapons.

The CBW Control and Warfare Elimination Act

First Round of Sanctions

The finding that Russia had used a chemical weapon triggered requirements for policy actions specified in the CBW Act. When such a finding is made, the CBW Act first requires the President (delegating authority 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 or technology controlled for national security reasons (Commodity Control List). [CBW Act, §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. The CBW Act authorizes the President to waive sanctions if he finds it essential to U.S. national security interests or if he finds that the violating government has undergone fundamental changes in leadership or policies.

On March 2, 2021, Secretary Blinken announced the imposition of this first round of sanctions, effective on March 18, but invoked national security waiver authority

(as did the Trump Administration after the 2018 Skripal attack) to allow for the continuation of

- foreign assistance;
- exports related to space cooperation and, until September 1, 2021, commercial space launches; and
- export licensing for national security-sensitive goods and technology in specific categories, including exports related to civil aviation safety, deemed exports or reexports, and wholly owned U.S. and other foreign subsidiaries operating in Russia.

In addition, Secretary Blinken invoked authorities granted his office related to weapons of mass destruction (WMD) proliferation to impose sanctions on the FSB, GRU (Russia's military intelligence agency), two GRU officers, and three research institutes for use of a chemical weapon in either the 2020 attack or the 2018 attack against Skripal (the FSB, GRU, and the GRU officers were already subject to similar sanctions). Secretary Blinken also added Russia to the International Trafficking in Arms Regulations (ITAR). The ITAR decision could indicate that restrictions on export licensing could remain in place beyond the 12 months required by the CBW Act.

Simultaneously, the Treasury Department invoked authorities related to Russia's invasion of Ukraine and WMD proliferation to impose sanctions on five Russian government officials, including the FSB director and two deputy ministers of defense, as well as on Russia's prosecutor general and federal prisons director for Navalny's subsequent arrest and imprisonment.

The March 2021 sanctions were imposed in coordination with the European Union (EU), which imposed an earlier round of sanctions in October 2020. Secretary Blinken said the United States, together with the EU and others, sought "to send a clear signal that Russia's use of chemical weapons and abuse of human rights have severe consequences."

Second Round of Sanctions

Within three months after the initial determination (in this case, by early June 2021), the CBW Act requires the President to take additional punitive steps unless he determines and certifies 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 cannot certify on all these terms, he is required to execute, in consultation with Congress, at least three additional measures among the following:

- oppose loans or financial or technical assistance to Russia by international financial institutions (IFIs);
- prohibit U.S. banks from making loans or providing credit to the Russian government, except for the purchase of food, or other agricultural products;
- prohibit exports to Russia of all other goods and technology, except food and other agricultural 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)]

CBW-related sanctions remain in place for at least a year and 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.

In response to the Skripal attack, the Trump Administration imposed a second round of sanctions in August 2019, one year after it imposed the first round of sanctions. The measures included opposing IFI loans or assistance to Russia; prohibiting U.S. banks from "lending non-ruble denominated funds to the Russian sovereign" and participating "in the primary market for non-ruble denominated bonds issued by the Russian sovereign"; and a "presumption of denial" policy for export licenses for goods controlled for their dual-use chemical and biological applications. U.S. banks are not prohibited from participating in the secondary market for Russian sovereign debt, and prohibitions do not apply to transactions with Russian state-owned enterprises.

To date, the Biden Administration has not announced a second round of sanctions under the CBW Act or certified that Russia has come into compliance with international norms. Under separate authorities, however, the Administration has expanded the prohibition against U.S. financial institutions' participating in the primary market for Russian sovereign bonds or lending to the Russian government to include non-ruble-denominated funds.

Other CBW Determinations

The CBW Act has been invoked on two other occasions. On August 2, 2013, the State Department determined that the government of Syria had used chemical weapons but for national security reasons sanctions decisions would be applied 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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