

Trade Compliance Flash: Let the Buyer Beware: OFAC Penalizes a Third Company for Post-Acquisition Sales by Non-U.S. Subsidiary to Countries Subject to U.S. Sanctions

International Alert

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On March 27, 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) entered into a [settlement agreement](#) in which Stanley Black & Decker, Inc., (Stanley Black & Decker) and its foreign subsidiary, Jiangsu Guoqiang Tools Co., Ltd. (GQ), agreed to pay \$1.869 million to settle its potential civil liability for 23 apparent violations of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. Part 560 (ITSR). The apparent violations arose after Stanley Black & Decker acquired a 60 percent interest in GQ in 2013. During due diligence in the two years before the purchase, Stanley Black & Decker learned that GQ sold its products to Iran and made discontinuance of these sales a condition of the purchase. Immediately after the purchase, Stanley Black & Decker implemented some training and policy changes concerning sanctions compliance, but apparently did not implement procedures to monitor or audit GQ's operations to ensure that its Iran-related sales did not recur post-acquisition.

As a result, GQ continued to make sales to Iran for another two years, despite knowledge that these activities violated Stanley Black & Decker's policies and U.S. sanctions. After Stanley Black & Decker learned of these sales, it initiated an internal investigation and ultimately reported the matter to OFAC. Stanley Black & Decker's internal investigation determined various GQ board members and senior management participated in the Iran sales and appear to have engaged in what OFAC labeled as "non-routine business practices" with regard to GQ's Iran sales. In particular, GQ apparently utilized trading companies in the United Arab Emirates and China as conduits for these Iran sales; GQ also created fictitious bills of lading with incorrect ports of discharge and places of delivery and instructed their customers not to write "Iran" on business documents, such as bills of lading.

Apart from the \$1.869 million penalty, the settlement agreement also mandates detailed OFAC-related compliance reforms, including (1) structural reforms evincing a management commitment to sanctions compliance, (2) the performance of a comprehensive sanctions risk assessment, (3) improved internal controls tailored to address sanctions risk, (4) testing and audit procedures to validate the effectiveness of the internal controls, and (5) an expansive sanctions training program. All U.S. companies would be wise to review these compliance reforms, as they appear to reflect OFAC's expectations for how U.S. companies with a multi-national footprint will structure their U.S. sanctions compliance policies going forward.

This penalty action is the third one this year that arises out of sales to an embargoed country by a non-U.S. subsidiary after acquisition, despite contractual clauses designed to ensure that the non-U.S. subsidiary ceased post-acquisition operations in countries subject to U.S. sanctions. The others were the [Kollmorgen Corporation penalty](#) on February 7, 2019 and the [AppliChem GmbH penalty](#) on February 14, 2019. In each of these other enforcement actions, the U.S. acquiring company spotted sales to embargoed countries during sanctions due diligence and directed these sales to cease. However, in each action, the non-U.S. company continued the sales, and the U.S. parent was penalized and directed to implement serious compliance reforms. With three penalty actions in a two-month period, OFAC is attempting to send a loud message to U.S. companies: it is not enough to identify sanctions risk during the purchase of a non-U.S. company—that risk must be effectively and meaningfully addressed. U.S. companies that fail to do so act at their peril.

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