

April 1, 2019

## **OFAC Takes Enforcement Action Against U.S. Parent Company for its Recently Acquired Chinese Subsidiary's Iran Sanctions Violations**

### **Enforcement Action Shows the Importance of Pre-Acquisition Sanctions Due Diligence and Post-Acquisition Sanctions Compliance Enhancements**

On March 27, 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") announced a \$1,869,144 settlement agreement with Connecticut-based Stanley Black & Decker, Inc. ("Stanley Black & Decker"), a manufacturer of industrial tools and household hardware, regarding 23 apparent violations of OFAC's Iran sanctions regulations.<sup>1</sup> OFAC determined that Stanley Black & Decker's Chinese subsidiary, Jiangsu Guoqiang Tools Co. Ltd. ("GQ"), knowingly provided power tools and spare parts to Iranian end-users.<sup>2</sup> According to OFAC, GQ's shipments were made via third-party intermediaries, located in the United Arab Emirates and China, with the knowledge that the products were ultimately destined for Iran.<sup>3</sup> Under U.S. law, non-U.S. companies owned or controlled by U.S. companies are required to adhere to Iran sanctions as if they were U.S. persons. The settlement, along with the Kollmorgen Corporation ("Kollmorgen") settlement in February 2019, signals the Trump Administration's willingness to hold U.S. parent companies liable for their subsidiaries' Iran sanctions violations, which is an area that, prior to this year, had seen little enforcement activity to date.

### **Stanley Black & Decker's Acquisition-Related Due Diligence and Post-Acquisition Compliance Integration Activities**

According to OFAC, Stanley Black & Decker began acquisition negotiations with GQ in 2011, during which Stanley Black & Decker engaged in sanctions due diligence and discovered that GQ exported to Iran. Over the course of the ensuing negotiations, Stanley Black & Decker took steps to require GQ to cease sales to, and transactions with, Iran prior to the acquisition date, and made ceasing such sales a prerequisite condition of the closing. In May 2013, Stanley Black & Decker acquired a 60 percent interest in GQ, thereby subjecting GQ to the Iranian Transactions and Sanctions Regulations (the "ITSR").<sup>4</sup>

OFAC noted that, subsequent to the acquisition of GQ, Stanley Black & Decker provided a series of trainings to GQ's employees on Stanley Black & Decker's U.S. economic sanctions compliance policies and procedures. According to OFAC, shortly after the acquisition Stanley Black & Decker's internal legal counsel reviewed the company's sanctions compliance policies and procedures with GQ's Manager for Export Sales by telephone. The GQ Manager for Export Sales was subsequently asked to provide this same training the broader GQ Export Sales team and to designate two GQ employees to attend additional training regarding Stanley Black & Decker's customer screening tool.

Approximately one year after the acquisition, Stanley Black & Decker internal compliance personnel again reviewed the sanctions compliance policies and procedures with the GQ Manager for Export Sales and, this time, other members of the Export Sales team. Notwithstanding these telephone trainings, OFAC noted that Stanley Black & Decker “did not implement procedures to monitor or audit GQ’s operations to ensure that its Iran-related sales had in fact ceased or did not recur post-acquisition.”<sup>5</sup>

### **The Apparent Violations**

OFAC determined that GQ appeared to have violated § 560.215(a) of the ITSR when it provided power tools and spare parts to Iran between June 2013 and December 2014.<sup>6</sup> Section 560.215 of the ITSR implements § 218 of the Iran Threat Reduction and Syria Human Rights Act, which extends the prohibitions in the ITSR to non-U.S. companies owned or controlled by U.S. companies and imposes liability on U.S. companies for Iran sanctions violations by non-U.S. companies they own or control. The total value of the power tools and parts provided to Iranian end users was \$3,201,648.

According to OFAC, in spite of GQ’s executed written agreements to not engage in transactions with Iran and Stanley Black & Decker’s post-acquisition compliance trainings, GQ willfully, and with full knowledge of the applicable sanctions prohibitions, continued to export goods to Iran throughout 2013 and 2014.<sup>7</sup> OFAC stated that members of GQ’s board of directors, senior management, and other employees were aware of the prohibited transactions and engaged in non-routine business practices in order to facilitate GQ’s prohibited exports to Iran and to conceal such transactions from Stanley Black & Decker.

OFAC stated that GQ utilized six trading companies (four located in the United Arab Emirates and two located in China) as intermediaries for these sales, and made shipments to these intermediaries with the knowledge that the products were ultimately destined for end users located in Iran. According to OFAC, GQ employees created fictitious bills of lading with incorrect ports of discharge and places of delivery. GQ employees also instructed customers not to write “Iran” on business documents, including bills of lading. Once Stanley Black & Decker became aware of the potential violations of U.S. economic sanctions, it initiated an internal investigation, subsequently hired a third-party independent investigative company, and ultimately disclosed the matter to OFAC.

### **Factors Affecting OFAC’s Penalty Determination**

OFAC determined that Stanley Black & Decker voluntarily self-disclosed the apparent violations and that the apparent violations constituted an egregious case. The statutory maximum civil monetary penalty amount for the apparent violations was \$6,922,757, and the base penalty amount was \$3,461,378. The settlement amount reflected OFAC’s consideration of the following facts and circumstances pursuant to OFAC’s Economic Sanctions Enforcement Guidelines.<sup>8</sup>

OFAC determined the following to be aggravating factors:

- “GQ, and its senior management, including two board members and an export sales manager, willfully violated the ITSR when it exported and attempted to export, reexport, sell, or supply power tools and spare parts directly or indirectly to Iran with knowledge that such activities constituted apparent violations of U.S. economic sanctions regulations and laws;”
- “GQ caused harm to the objectives of the ITSR by conferring an economic benefit to Iran over an 18-month period, in a systematic scheme involving a series of transactions that occurred on a continuing basis; and”
- “GQ is a sophisticated company with a history of extensive export operations, with executive leadership who had knowledge of U.S. economic sanctions.”<sup>9</sup>

OFAC determined the following to be mitigating factors:

- “Neither Stanley Black & Decker nor GQ have received a penalty notice or finding of violation from OFAC in the five years preceding the earliest transaction giving rise to the apparent violations;”
- “Upon learning of GQ’s apparent violations, Stanley Black & Decker implemented immediate and substantive remedial efforts, including halting all GQ exports, hiring an independent investigator; and”
- “Stanley Black & Decker cooperated with OFAC’s investigation by conducting an extensive investigation and producing the results to OFAC, responding to OFAC’s requests for additional information with detailed records and meaningful clarifications, and signed multiple tolling agreements to extend the statute of limitations.”<sup>10</sup>

As is its standard practice, OFAC did not disclose how it weighed these aggravating and mitigating factors in reaching the settlement amount. OFAC also described several compliance enhancements that Stanley Black & Decker committed to implement as a part of its settlement with OFAC (which has become OFAC’s standard practice and such commitments are enforceable by OFAC, including by means of reopening the investigation), including having a new management team in place at GQ that:

- “[I]s committed to a culture of compliance;”
- “[C]onducts regular risk assessments to ensure that its internal controls appropriately mitigate the entity’s sanctions-related risks;”
- “[C]onducts regularized audits; and”
- “[P]rovides ongoing sanctions compliance training throughout GQ.”<sup>11</sup>

---

## Implications

OFAC's actions reflect the Trump Administration's aggressive stance on Iran sanctions. Along with the Kollmorgen Corporation settlement with OFAC in February 2019, the settlement with Stanley Black & Decker signals heightened OFAC interest in pursuing U.S. companies for the Iran sanctions violations of the non-U.S. companies they own or control.<sup>12</sup> The Stanley Black & Decker settlement makes clear that OFAC expects the immediate adoption and implementation of appropriate controls when U.S. companies acquire non-U.S. companies with preexisting relationships with sanctioned persons or jurisdictions. This is particularly relevant for target companies that have preexisting relationships with Iran and Cuba, given that under these sanctions programs non-U.S. entities owned or controlled by U.S. persons are themselves required to adhere to Iran and Cuba sanctions.<sup>13</sup>

The settlement with Stanley Black & Decker also demonstrates that post-acquisition compliance policies and trainings alone will not be sufficient to inoculate against all potential sanctions risks. OFAC clearly expects entities to approach sanctions compliance holistically and to augment policies and training with routine audits, risk assessments, and other internal controls to ensure compliance with U.S. economic sanctions. This may be particularly relevant where, such as in the Stanley Black & Decker acquisition of GQ, due diligence indicates that a non-U.S. acquisition target has current or prior dealings with a comprehensively sanctioned jurisdiction.

Consistent with other recent sanctions enforcement actions,<sup>14</sup> this case also highlights the importance of performing heightened due diligence with regard to potential acquisition targets, joint venture partners, customers, and other counterparties known to engage in business with sanctioned jurisdictions or persons or that otherwise pose elevated risk profiles due to their geographic location, customers, suppliers, or products. This is also consistent with FinCEN's 2018 advisory on Iran's attempts to exploit the U.S. financial system, which recommends enhanced due diligence for transactions originating from or otherwise involving jurisdictions in close proximity to Iran.<sup>15</sup>

Finally, unlike the Kollmorgen settlement (determined to be non-egregious and resulting in a \$7,343 penalty), in which OFAC cited Kollmorgen's "extensive preventative and remedial conduct" as a mitigating factor,<sup>16</sup> OFAC did not explicitly include any of Stanley Black & Decker's pre-acquisition sanctions due diligence or post-acquisition sanctions compliance integration activities in its list of mitigating factors. Based upon OFAC's descriptions, the diligence conducted by Kollmorgen, both before and after acquisition, was far more extensive than the diligence conducted by Stanley Black & Decker. Kollmorgen's diligence efforts appear to have been a key factor in OFAC's determination that the conduct in that case was non-egregious. It is also noteworthy that the value provided to Iran, as described by OFAC, was significantly higher in the Stanley Black & Decker settlement (approximately \$3,201,648) compared to the Kollmorgen settlement (approximately \$14,867). Although OFAC does not disclose how it weighs various aggravating and mitigating factors, these two cases (with relatively similar fact patterns, but significantly different penalty outcomes) demonstrate that OFAC views robust pre-acquisition sanctions due diligence and post-

acquisition sanctions compliance enhancements as important mitigating factors in the OFAC enforcement context that may affect any potential penalty amount imposed.

We will continue to monitor sanctions developments and look forward to providing you with further updates.

\* \* \*

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

H. Christopher Boehning  
+1-212-373-3061  
[cboehning@paulweiss.com](mailto:cboehning@paulweiss.com)

Jessica S. Carey  
+1-212-373-3566  
[jcarey@paulweiss.com](mailto:jcarey@paulweiss.com)

Christopher D. Frey  
+81-3-3597-6309  
[cfrey@paulweiss.com](mailto:cfrey@paulweiss.com)

Michael E. Gertzman  
+1-212-373-3281  
[mertzman@paulweiss.com](mailto:mertzman@paulweiss.com)

Roberto J. Gonzalez  
+1-202-223-7316  
[rgonzalez@paulweiss.com](mailto:rgonzalez@paulweiss.com)

Brad S. Karp  
+1-212-373-3316  
[bkarp@paulweiss.com](mailto:bkarp@paulweiss.com)

Richard S. Elliott  
+1-202-223-7324  
[relliott@paulweiss.com](mailto:relliott@paulweiss.com)

Rachel M. Fiorill  
+1-202-223-7346  
[rfiorill@paulweiss.com](mailto:rfiorill@paulweiss.com)

Karen R. King  
+1-212-373-3784  
[kking@paulweiss.com](mailto:kking@paulweiss.com)

*Associate Joshua R. Thompson contributed to this client alert.*

<sup>1</sup> U.S. Dep't of Treasury, OFAC, *Stanley Black & Decker, Inc. Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations* (Mar. 27, 2019), available [here](#) ("OFAC Web Notice").

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* At 1-2.

<sup>6</sup> See 31 C.F.R. part 560.

<sup>7</sup> OFAC Web Notice at 2.

<sup>8</sup> See 31 C.F.R. part 501, app. A. "General Factors Affecting Administrative Action."

<sup>9</sup> OFAC Web Notice at 2.

<sup>10</sup> *Id.* at 3.

<sup>11</sup> *Id.*

<sup>12</sup> See Paul, Weiss, *In Unprecedented Move, OFAC Takes Enforcement Action Against U.S. Parent Company for Turkish Subsidiary's Iran Sanctions Violations and Simultaneously Sanctions the Subsidiary's Ex-Managing Director* (Feb. 11, 2019), available [here](#) ("Kollmorgen").

<sup>13</sup> See Cuban Assets Control Regulations, 31 C.F.R. § 515.329.

- 
- <sup>14</sup> See, e.g., Kollmorgen; additionally the OFAC Epsilon Electronics, Inc. settlement demonstrates that the UAE remains a higher-risk jurisdiction for Iran-related transactions (U.S. Dep't of the Treasury, OFAC, *Epsilon Electronics, Inc. Settles Potential Civil Liability for Alleged Violations of the Iranian Transactions and Sanctions Regulations and Related Claims* (Sept. 13, 2018), available [here](#)); and the OFAC resolutions with Jereh Oil Field Services Group Co., Ltd (U.S. Dep't of the Treasury, OFAC, *Yantai Jereh Oilfield Services Group Co., Ltd. Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations* (Dec. 12, 2018), available [here](#)) and e.l.f. Cosmetics, Inc. (See Paul, Weiss, *OFAC Reaches Settlement with e.l.f. Cosmetics, Inc. for North Korea Sanctions Violations Resulting from Inadequate Supply Chain Due Diligence* (Feb. 4, 2019), available [here](#)) involved transactions with China.
- <sup>15</sup> U.S. Dep't of the Treasury, Fin. Crimes Enforcement Network, *Advisory on the Iranian Regime's Illicit and Malign Activities and Attempts to Exploit the Financial System*, FIN-2018-A006 (Oct. 11, 2018), available [here](#).
- <sup>16</sup> U.S. Dep't of Treasury, OFAC, *Kollmorgen Corporation Settles Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations* (Feb. 7, 2019), available [here](#).