



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

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**OFAC Settles with Berkshire Hathaway Inc. with Respect to Potential Civil Liability for Apparent Violations of the Iranian Transactions and Sanctions Regulations Engaged in by one of its Foreign Subsidiaries**

Berkshire Hathaway Inc. (“Berkshire”), a company based in Omaha, Nebraska, has agreed to pay \$4,144,651 to settle its potential civil liability for trade-related transactions and exports to Iran engaged in by its indirectly wholly owned Turkish subsidiary, Iscar Kesici Takim Ticareti ve Imalati Limited Sirket (“Iscar Turkey”). Iscar Turkey sold cutting tools and related inserts to two third-party Turkish distributors knowing that such goods would be shipped to a distributor in Iran for resale to Iranian end-users, including several entities later identified as meeting the definition of the Government of Iran, in violation of Berkshire’s compliance policies. Iscar Turkey took steps to obfuscate its dealings with Iran, including concealing these activities from Berkshire. Iscar Turkey’s conduct in this matter, as further detailed below, represents particularly serious apparent violations of the law calling for a strong enforcement action.

**Description of the Apparent Violations and the Conduct Leading to the Apparent Violations**

From on or about December 2012 to on or about January 2016, Iscar Turkey, through the actions of certain employees, knowingly engaged in transactions, directly or indirectly, with persons subject to the jurisdiction of the Government of Iran that would have been prohibited pursuant to the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (ITSR), if engaged in by a U.S. person or in the United States. Specifically, Iscar Turkey sold cutting tools and related disposable inserts to two Turkish intermediary companies knowing that those goods would be supplied to an Iranian distributor for resale to Iranian end-users, including several end-users later identified by Berkshire as meeting the definition of the Government of Iran. Iscar Turkey completed 144 orders of goods that were ultimately resold and shipped to Iran with a total transactional value of \$383,443 in apparent violation of § 560.215 of the ITSR (the “Apparent Violations”).<sup>1</sup> Additionally, Iscar Turkey purchased goods produced by other Berkshire subsidiaries to fulfill orders destined for Iran.

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<sup>1</sup> Pursuant to § 560.215(a) of the Iranian Transactions and Sanctions Regulations (ITSR) — which implements § 218(b) of the Iran Threat Reduction and Syria Human Rights Act of 2012 (Pub. L. 112-158) (TRA) and § 4 of Executive Order 13628 — “an entity that is owned or controlled by a United States person and established or maintained outside the United States is prohibited from knowingly engaging in any transaction, directly or indirectly, with the Government of Iran or any person subject to the jurisdiction of the Government of Iran that would be prohibited pursuant to this part if engaged in by a United States person or in the United States.” Section 560.701(a)(3) further states that “a civil penalty . . . may be imposed on a United States person if an entity owned or controlled by the United States person and established or maintained outside the United States violates . . . the prohibition set forth in § 560.215.”

The Apparent Violations occurred under the direction of certain Iscar Turkey senior managers despite Berkshire and other Berkshire subsidiaries' repeated communications and policies sent to Iscar Turkey regarding U.S. sanctions against Iran and the application of the ITSR to Iscar Turkey's operations. The General Manager for Iscar Turkey reportedly believed it was inevitable that U.S. and European Union sanctions against Iran would be lifted, and sought to be well positioned to sell in the Iranian market. To capitalize on this potential easing of sanctions, the General Manager for Iscar Turkey established in 2012 a small-volume commercial relationship with an Iranian distributor so that, if sanctions against Iran were eased, Iscar Turkey would be well positioned to expand its sales to Iran. The General Manager and his employees took certain steps to conceal Iscar Turkey's activities and plans with Iran such as: utilizing private email addresses that bypassed the controls and visibility of the corporate email system to communicate about orders from Iranian customers; utilizing false names in internal records of Iscar Turkey to conceal transactions; providing false assurances in response to compliance inquiries; providing fraudulent evidence of a compliance training session; and, when the internal investigation was initiated, lying to interviewers and counseling others to lie.

On June 11, 2012, Iscar Turkey's Sales Manager and two other Iscar Turkey employees travelled to Iran after Iscar Turkey was approached by an Iranian company regarding a potential large order of cutting tools. Iscar Turkey's General Manager authorized the trip to Iran. During the trip, Iscar Turkey employees met with senior managers of an Iranian distributor. Following the meeting, Iscar Turkey established a business relationship with the Iranian distributor and used two independent Turkish companies as distributors (the "Turkish Distributors") to conceal that the goods were ultimately destined for Iran.

In January 2013, Iscar Turkey provided one of the Turkish Distributors with an open-ended authorization letter that certified it as an authorized distributor responsible for selling in the region all Iscar Turkey products as well as products from four other Berkshire subsidiaries. This letter was specifically used for sales in Iran by the Turkish Distributors.

To obfuscate Iscar Turkey's dealings with Iran, the Iranian distributor made payments in cash and denominated in Euros. Subsequent transactions were paid through the formal banking system denominated in Euros. The Turkish Distributors also entered into arrangements with other Turkish companies to issue false invoices, falsely giving the impression that goods were going to other Turkish companies rather than Iran. Furthermore, Iscar Turkey's employees caused Iscar Turkey to list incorrect end-customer names for the majority of its orders arising from the Apparent Violations in an apparent attempt to mask the Iranian end users and conceal from Berkshire and its subsidiaries that sales to Iranians were occurring. At least one entry used a fake name created by an Iscar Turkey employee for a non-existent company. Starting in 2014, Iscar Turkey personnel used private email addresses not tied to the company or the employees' actual names to further conceal the Apparent Violations and prevent others within Berkshire and Berkshire's subsidiaries from detecting the Iran-related activity. Iscar Turkey's Sales Manager instructed employees to open private email accounts and to use those accounts to communicate about the orders destined for Iran.

Despite the efforts taken by Iscar Turkey's employees to conceal their Iranian activities, employees of certain other Berkshire subsidiaries received specific information in emails that

could have revealed that orders placed by Iscar Turkey may have been destined for Iranian end users and in contravention of their respective corporate policies and procedures. For example, these Berkshire subsidiaries received emails: (1) containing an Iranian address in the email chain indicating that the distributor was in Iran; or (2) referencing a customer in the email chain known to a subsidiary to be located in Iran. Despite these warning signs, only one Berkshire subsidiary informed Iscar Turkey that an order was for an Iranian customer and that such transactions were prohibited; the others did not.

Berkshire voluntarily self-disclosed the apparent violations to OFAC in May 2016 after receiving an anonymous tip in January 2016 regarding the apparent violations. Berkshire promptly responded to all follow-on questions regarding its voluntary self-disclosure and cooperated throughout OFAC's investigation. Berkshire and its subsidiaries and affiliates also entered into three statute of limitations tolling agreements with OFAC. Furthermore, Berkshire took appropriate measures upon learning of Iscar Turkey's dealings with Iran, to include replacing personnel involved in the Apparent Violations and enhancing compliance procedures for its foreign subsidiaries.

### **Penalty Calculations and General Factors Analysis**

The statutory maximum civil monetary penalty applicable in this matter is \$36,841,344. OFAC determined that Berkshire voluntarily self-disclosed the Apparent Violations, and that the Apparent Violations constitute an egregious case due to the actions of Iscar Turkey.<sup>2</sup> Accordingly, under OFAC's Economic Sanctions Enforcement Guidelines ("Enforcement Guidelines"), the base civil monetary penalty amount applicable in this matter is \$18,420,672.

The settlement amount of \$4,144,651 reflects OFAC's consideration of the General Factors under the Enforcement Guidelines. Specifically, OFAC determined the following to be aggravating factors:

- (1) Iscar Turkey's management willfully engaged in transactions with knowledge that such transactions violated prohibitions related to Iran;
- (2) Certain Berkshire subsidiaries knew or had reason to know that some of the products they sent to Iscar Turkey were intended for Iran;
- (3) Iscar Turkey's senior management intentionally concealed its dealings with Iran;
- (4) Iscar Turkey demonstrated a pattern of conduct by knowingly engaging in prohibited dealings for approximately three years;

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<sup>2</sup> In cases involving apparent violations of § 560.215 of the ITSR, U.S. persons can be assessed penalties for knowing transactions with Iran or the Government of Iran engaged in by entities that they own or control and are established or maintained outside of the United States if such transactions would have been prohibited if engaged in by a U.S. person or in the United States. *See* § 560.701(a)(3). As such, Berkshire could be liable for the Apparent Violations of its foreign subsidiary, Iscar Turkey.

(5) Iscar Turkey's senior management sought out business activities in Iran with the express purpose of building a foothold in the Iranian market when it and other companies were prohibited from doing so; and

(6) Iscar Turkey violated prohibitions placed on Iran at a time when those prohibitions were intended to impose sustained pressure on Iran, having the effect of undermining U.S. leverage in negotiations with Iran.

OFAC determined the following to be mitigating factors:

(1) Berkshire voluntarily self-disclosed the Apparent Violations;

(2) Berkshire promptly responded to all of OFAC's follow-on questions regarding its voluntary self-disclosure and cooperated throughout the investigation;

(3) Berkshire and its subsidiaries and affiliates entered into three statute of limitations tolling agreements with OFAC;

(4) Berkshire took appropriate measures upon learning of Iscar Turkey's dealings with Iran, to include replacing personnel complicit in the Apparent Violations and enhancing compliance procedures for its foreign subsidiaries; and

(5) Iscar Turkey has not received a penalty notice or finding of violation from OFAC in the five years preceding the earliest date of the transactions giving rise to the Apparent Violations.

### **Compliance Considerations**

This enforcement action highlights the importance of the following compliance measures in appropriate circumstances: (1) performing appropriate due diligence, particularly with regard to affiliates, subsidiaries, or counter-parties that are known to transact with OFAC-sanctioned countries or persons, or that are otherwise determined to be higher risk based on a variety of factors, including their geographic location, customers and counterparties, or products and services; (2) ensuring subsidiaries understand their obligation to comply with all applicable OFAC sanctions, to include when they supply goods to other companies within their corporate chain, and to report potentially violative conduct; and (3) verifying the accuracy of end-users and associated underlying paperwork for goods shipped through third-country distributors, particularly where there are red flags indicating potential OFAC-sanctioned countries or persons.

### **OFAC Enforcement and Compliance Resources**

For more information regarding OFAC regulations, please go to: [www.treasury.gov/ofac](http://www.treasury.gov/ofac).

Information concerning the civil penalties process can be found in the OFAC regulations governing each sanctions program; the Reporting, Procedures, and Penalties Regulations, 31 C.F.R. part 501; and the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app.

A. These references, as well as recent final civil penalties and enforcement information, can be found on OFAC's website at [www.treasury.gov/ofac/enforcement](http://www.treasury.gov/ofac/enforcement).

On May 2, 2019, OFAC published [A Framework for OFAC Compliance Commitments](#) in order to provide organizations subject to U.S. jurisdiction, as well as foreign entities that conduct business in or with the United States or U.S. persons, with OFAC's perspective on the essential components of a sanctions compliance program. The *Framework* also outlines how OFAC may incorporate these components into its evaluation of apparent violations and resolution of investigations resulting in settlements. The *Framework* includes an appendix that offers a brief analysis of some of the root causes of apparent violations of U.S. economic and trade sanctions programs OFAC has identified during its investigative process.