

A TRUCKLOAD OF COMPLIANCE GUIDANCE

On August 6, 2019, OFAC announced that U.S. parent company PACCAR Inc had settled potential civil liability for 63 apparent violations of the Iranian Transactions and Sanctions Regulations committed by its Dutch wholly owned subsidiary, DAF Trucks N.V.¹ PACCAR Inc agreed to pay \$1,709,325 relating to the 63 apparent violations, dating from 2013-2015 in connection with the sales of trucks valued at approximately \$5.4 million where DAF Trucks N.V. knew or had reason to know that the trucks were ultimately intended for buyers in Iran.

OFAC's settlement with PACCAR Inc is another example where a U.S. parent company is held liable for the acts of its non-US subsidiary where there is no alleged misconduct by the parent company² and provides guidance on compliance measures especially for companies that operate through distributors/independent dealers/re-sellers, and highlights the steps that PACCAR Inc., as the U.S. parent company, took to address the sanctions risk that these operating models present.

OFAC determined that PACCAR Inc voluntarily disclosed the apparent violations and that the apparent violations constituted a non-egregious case. OFAC considered as mitigating factors both that DAF Trucks N.V. maintained a trade sanctions compliance program that included contractual prohibitions on dealers and service partners re-selling DAF products in violation of U.S. trade sanctions and that upon learning of the apparent violations DAF Trucks N.V. took remedial actions that included an internal investigation, termination of employees, cancelling orders, and enhancing its trade controls.

OFAC highlighted some of the steps that PACCAR Inc and DAF Trucks N.V. took in response to the apparent violations to minimize the risk of reoccurrence, which is a key point from OFAC's "A Framework for OFAC Compliance Commitments,"³

¹ https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20190806_paccar.pdf.

² See e.g., OFAC's March 2019 Settlement Agreement with Stanley Black & Decker, Inc. and its foreign subsidiary, Jiangsu Guoqiang Tools Co., Ltd. Note to §560.215: A U.S. person is subject to the civil penalties provided for in section 206(b) of the International Emergency Economic Powers Act ("IEEPA") (50 U.S.C. 1705(b)) if any foreign entity that it owns or controls violates the prohibition set forth in this section. See §560.701(a)(3) of this part for civil penalties.

³ https://www.treasury.gov/resource-center/sanctions/Documents/framework_ofac_cc.pdf.

which includes the expectation that companies will enhance their compliance programs to address issues as they are identified.

Companies who operate through a similar model of dealers and re-sellers would be wise to proactively examine their compliance programs to see if they reflect the following elements specifically called out by OFAC in this settlement:

- Do you have a full-time Compliance Director with a defined role and defined reporting lines into the General Counsel/Chief Compliance Officer?
- Does your Compliance Manual include guidance on end-customer and transaction due diligence for your employees?
- Have you examined your re-sale network and considered restrictions to limit the risk of resales in violation of regulations?
- Have you informed all of your dealers in your dealer network in writing of their obligation to comply with US and other trade sanctions and received certifications from them regarding their compliance?
- Is trade sanctions compliance part of your mandatory annual compliance training?

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