



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

**SETTLEMENT AGREEMENT**

This settlement agreement (the “Agreement”) is made by and between the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) and Berkshire Hathaway Inc. (“Berkshire”), on behalf of itself and its subsidiary IMC International Metalworking Companies B.V. (“IMC”) and IMC’s wholly-owned subsidiary in Turkey, Iscar Kesici Takim Ticareti ve Imalati Limited Sirket (“Iscar Turkey”). Berkshire, IMC, and Iscar Turkey are hereinafter collectively referred to as “Respondent.”

**I. PARTIES**

OFAC administers and enforces economic sanctions against targeted foreign countries, regimes, terrorists, international narcotics traffickers, and proliferators of weapons of mass destruction, among others. OFAC acts under Presidential national emergency authorities, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction.

Berkshire is a multinational conglomerate holding company headquartered in Omaha, Nebraska and organized under the laws of the state of Delaware. IMC is a subsidiary indirectly and wholly-owned by Berkshire. IMC is headquartered in the Netherlands. IMC and its subsidiaries deal in cutting tools and related inserts.

Iscar Turkey is a subsidiary of IMC and headquartered in Turkey. Other IMC subsidiaries include Iscar Ltd. in Israel, Ingersoll Werkzeuge GmbH in Germany, IT.TE.DI. in Italy, Outiltec in France, Tool-Flo Manufacturing, Inc. in the United States, Unitac Incorporated<sup>1</sup> in Japan, and UOP S.p.A. in Italy.

These eight IMC subsidiaries are either wholly-owned or majority-owned by wholly-owned subsidiaries of Berkshire. Accordingly, they are foreign entities owned or controlled by a U.S. person as defined in § 560.215 of the Iranian Transactions and Sanctions Regulations, 31 C.F.R. part 560 (ITSR).

**II. APPARENT VIOLATIONS**

Berkshire submitted a voluntary self-disclosure to OFAC in 2017 regarding apparent violations of the ITSR committed by Iscar Turkey. OFAC subsequently requested additional information and documentation from Berkshire. OFAC’s review of Berkshire’s submissions identified conduct that appears to have violated the ITSR. Specifically, from approximately December 2012 to January 2016, Iscar Turkey appears to have violated § 560.215 of the ITSR when it engaged in at least 144 transactions involving Iran valued at \$383,443 that would have been prohibited by §§ 560.203, 560.204, 560.206, and 560.208 of the ITSR if engaged in by a

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<sup>1</sup> Unitac merged into Tungaloy Corporation in 2013. The country given for Unitac is the country for Tungaloy Corporation.

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U.S. person (the “Apparent Violations”). The Apparent Violations constitute an egregious case and were voluntarily self-disclosed.

In cases involving apparent violations of § 560.215 of the ITSR, U.S. persons can also be assessed penalties for transactions 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. The conduct forming the basis for OFAC’s egregiousness determination, however, is attributable to Iscar Turkey and other Berkshire subsidiaries but not Berkshire itself.

### **III. FACTUAL STATEMENT**

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 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. Berkshire’s disclosure identified that Iscar Turkey completed 144 orders of goods that were ultimately resold and shipped to Iran with a total transactional value of \$383,443. Additionally, Iscar Turkey purchased goods produced by other Berkshire subsidiaries to fulfill orders destined for Iran.

The Apparent Violations occurred under the direction of certain Iscar Turkey senior managers despite Berkshire and IMC’s repeated communications 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 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

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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 all Iscar Turkey, Outiltec, IT.TE.DI., UOP, and Unitac products in the region. 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 IMC and Berkshire 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 IMC subsidiaries were exposed to specific information in emails which 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 IMC subsidiaries received emails: (1) containing an address in the email chain which indicated 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 determined that an order was for an Iranian customer and informed Iscar Turkey that the ITSR prohibited such transactions; the others did not.

After voluntarily self-disclosing the Apparent Violations on behalf of Iscar Turkey, 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.

#### **IV. TERMS OF SETTLEMENT**

OFAC and Berkshire agree as follows:

**Berkshire Hathaway Inc.**

1. In consideration of the undertakings of Respondent in paragraph 2 below, OFAC agrees to release and forever discharge Respondent, without any finding of fault, from any and all civil liability in connection with the Apparent Violations arising under the legal authorities that OFAC administers.
2. In consideration of the undertakings of OFAC in paragraph 1 above, Respondent agrees and represents:
  - A. Within fifteen (15) days of the date Respondent receives the unsigned copy of this Agreement, to:
    - (i) sign, date, and send a digital copy of this agreement to [REDACTED]. Respondent should retain a copy of the signed Agreement and a receipt or other evidence that shows the date that Respondent sent a digital copy of the signed Agreement to OFAC; and
    - (ii) pay or arrange for the payment to the U.S. Department of the Treasury the amount of \$4,144,651. Respondent's payment must be made either by electronic funds transfer in accordance with the enclosed "Electronic Funds Transfer (EFT) Instructions," or by cashier's or certified check or money order payable to the "U.S. Treasury" and referencing ENF 45797. Unless otherwise arranged with the U.S. Department of the Treasury's Bureau of the Fiscal Service, Respondent must either: (1) indicate payment by electronic funds transfer, by checking the box on the signature page of this Agreement; or (2) enclose with this Agreement the payment by cashier's or certified check or money order.
  - B. To waive (i) any claim by or on behalf of Respondent, whether asserted or unasserted, against OFAC, the U.S. Department of the Treasury, and/or its officials and employees arising out of the facts giving rise to the enforcement matter that resulted in this Agreement, including but not limited to OFAC's investigation of the Apparent Violations, and (ii) any possible legal objection to this Agreement at any future date.
  - C. **Compliance Commitments:** Respondent has terminated the conduct described above and has established, and agrees to maintain for at least five years following the date this Agreement is executed, sanctions compliance measures that are designed to minimize the risk of recurrence of similar conduct in the future. Specifically, OFAC and Respondent understand that the following compliance commitments have been made:
    - a. **Management Commitment:**
      - i. Berkshire commits that its senior management has reviewed and approved Berkshire's sanctions compliance policy and program.

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- ii. Berkshire commits to ensuring that its senior management and the senior management of IMC, including senior leadership, executives, and the board of directors, are committed to supporting Berkshire's sanctions compliance policy and program.
  - iii. Berkshire commits to ensuring that IMC's compliance unit(s) and compliance units within IMC's operating subsidiaries are delegated sufficient authority and autonomy to deploy sanctions compliance policies and procedures at the operating company level in a manner that effectively addresses IMC's and its operating subsidiaries' sanctions risk.
  - iv. Berkshire commits to ensuring that IMC's compliance unit(s) and compliance units within IMC's operating subsidiaries receive adequate resources—including in the form of human capital, expertise, information technology, and other resources, as appropriate—that are relative to IMC's and its operating subsidiaries' breadth of operations, target and secondary markets, and other factors affecting its overall risk profile.
  - v. Berkshire commits to ensuring that its senior management and IMC's senior management promote a "culture of compliance" throughout the organization.
- b. Risk Assessment:**
- i. Berkshire represents that IMC periodically conducts a sanctions risk assessment in a manner, and with a frequency, that adequately accounts for potential risks. Such risks could be posed by IMC's subsidiary clients and customers, products, services, supply chain, intermediaries, counter-parties, transactions, and geographic locations, depending on the nature of the organization. The risk assessment will be updated to account for the root causes of any apparent violations or systemic deficiencies identified by Berkshire, IMC or their compliance unit(s) during the routine course of business.
  - ii. Berkshire represents that IMC has developed a methodology to identify, analyze, and address the particular risks it identifies. The risk assessments will be updated to account for the conduct and root causes of any apparent violations or systemic deficiencies identified by IMC during the routine course of business, for example, through a testing or audit function.
  - iii. Specifically with respect to the conduct outlined above, Berkshire has engaged outside professionals to perform a targeted review of the sanctions compliance practices and procedures at certain subsidiaries to evaluate their operation.

**c. Internal Controls:**

- i. Berkshire has implemented its Prohibited Business Practices Policy which mandates that its subsidiaries are required to create and administer an effective sanctions compliance program tailored to each subsidiary's risk profile. IMC has designed and implemented written policies and procedures to conform with Berkshire's Prohibited Business Practices Policy and to create a sanctions compliance program tailored to its risk profile. These policies and procedures are relevant to the organization, capture IMC's and its subsidiaries' day-to-day operations and procedures, are easy to follow, and designed to prevent employees from engaging in misconduct.
- ii. IMC has implemented internal controls that adequately address the results of its sanctions risk assessment and profile. These internal controls should enable IMC to clearly and effectively identify, interdict, escalate, and report to appropriate personnel within the organization transactions and activity that may be prohibited by OFAC. To the extent information technology solutions factor into IMC's internal controls, IMC has selected and calibrated the solutions in a manner that is appropriate to address IMC's and its subsidiaries' risk profile and compliance needs, and IMC routinely tests the solutions to ensure effectiveness.
- iii. Berkshire represents that it and IMC are committed to enforcing the policies and procedures they implement as part of their respective sanctions compliance internal controls through internal or external audits.
- iv. Berkshire commits to ensuring that Berkshire and IMC's respective OFAC-related recordkeeping policies and procedures adequately account for the requirements pursuant to the sanctions programs administered by OFAC.
- v. Berkshire commits to ensuring that, upon learning of a weakness in Berkshire's or IMC's internal controls pertaining to sanctions compliance, it will take immediate and effective action, to the extent possible, to identify and implement compensating controls until the root cause of the weakness can be determined and remediated.
- vi. Berkshire and IMC have clearly communicated their respective sanctions compliance program's policies and procedures to all relevant staff, including personnel within the sanctions compliance function, as well as relevant gatekeepers and business units operating in high-risk areas (e.g., customer acquisition, payments, sales, etc.) and to external parties performing sanctions compliance responsibilities on behalf of Respondent.
- vii. IMC has appointed personnel to integrate its sanction compliance program's policies and procedures into its and its operating subsidiaries' daily

operations. This process includes consultations with relevant business units, and confirms that employees understand the policies and procedures.

- viii. Specifically with respect to the conduct outlined above, IMC adopted new policies and trained its subsidiaries in these policies after discovering the Apparent Violations. IMC implemented a process requiring additional compliance oversight of orders, to include required review and approval of proposed transactions before shipping. Furthermore, IMC established a system that allows it to monitor the identities of Iscar Turkey's customers.

**d. Testing and Audit:**

- i. Berkshire commits to ensuring that its testing or internal audit function is accountable to senior management, is independent of the audited activities and functions, and has sufficient authority, skills, expertise, resources, and authority within the organization.
- ii. Berkshire commits to ensuring that IMC employs testing or internal audit procedures appropriate to the level and sophistication of its sanctions compliance program and that this function, whether deployed internally or by an external party, reflects a comprehensive and objective assessment of IMC's and its subsidiaries' sanctions-related risk assessment and internal controls.
- iii. Berkshire commits to ensuring that Berkshire and IMC, upon learning of a confirmed negative testing result or audit finding pertaining to their respective sanctions compliance programs, will take immediate and effective action, to the extent possible, to identify and implement compensating controls until the root cause of the weakness can be determined and remediated.

**e. Training:**

- i. Berkshire commits to ensuring that IMC's OFAC-related compliance training program provides adequate information and instruction to employees and, as appropriate, stakeholders (for example, clients, suppliers, business partners, and counterparties) in order to support Berkshire's and IMC's sanctions compliance efforts.
- ii. Berkshire commits that IMC will provide OFAC-related compliance training with a scope that is appropriate for the products and services it and its operating subsidiaries offer; the customers, clients, and partner relationships they maintain; and the geographic regions in which they operate.
- iii. Berkshire commits that IMC will provide OFAC-related training with a frequency that is appropriate based on its OFAC risk assessment and risk profile and, at a minimum, at least once a year to all relevant employees.

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- iv. Berkshire commits to ensuring that IMC, upon learning of a confirmed negative testing result or audit finding, or other deficiency pertaining to its sanctions compliance program, will take immediate and effective action to provide training to relevant personnel.
  - v. IMC's training program includes easily accessible resources and materials that are available to all applicable personnel.
  - f. **Annual Certification:** On an annual basis, for a period of five years, starting from 180 days after the date the Agreement is executed, a senior-level executive or manager of Berkshire will submit a certification confirming that Respondent has implemented and continued to maintain the sanctions compliance measures as committed above.
- D. Should OFAC determine, in the reasonable exercise of its discretion, that Respondent appears to have materially breached its obligations or made any material misrepresentations under Subparagraph C (Compliance Commitments) above, OFAC shall provide written notice to Respondent of the alleged breach or misrepresentations and provide Respondent with 30 days from the date of Respondent's receipt of such notice, or longer as determined by OFAC, to determine that no material breach or misrepresentations has occurred or that any breach or misrepresentation has been cured.
- E. In the event OFAC determines that a material breach of, or misrepresentation in, this Agreement has occurred due to a failure to perform the Compliance Commitments, OFAC will provide notice to Respondent of its determination and whether OFAC is re-opening its investigation. The statute of limitations applying to the Apparent Violations shall be deemed tolled until a date 180 days following Respondent's receipt of notice of OFAC's determination that a breach of, or misrepresentation in, this Agreement has occurred.
- F. Should the Respondent engage in any violations of the sanctions laws and regulations administered by OFAC—including those that are either apparent or alleged—OFAC may consider Respondent's sanctions history, or its failure to employ an adequate sanctions compliance program or appropriate remedial measures, associated with this Agreement as a potential aggravating factor consistent with the Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, Appendix A.
3. This Agreement shall not in any way be construed as an admission by Respondent that Respondent engaged in the Apparent Violations.
4. This Agreement has no bearing on any past, present, or future OFAC actions, including the imposition of civil monetary penalties, with respect to any activities by Respondent other than those set forth in the Apparent Violations.



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5. OFAC may, in its sole discretion, post on OFAC's website this entire Agreement and issue a public statement about the factors of this Agreement, including the identity of any entities involved, the settlement amount, and a description of the Apparent Violations.
6. This Agreement consists of 10 pages, and expresses the complete understanding of OFAC and Respondent regarding resolution of OFAC's enforcement matter involving the Apparent Violations. No other agreements, oral or written, exist between OFAC and Respondent regarding resolution of this matter.
7. This Agreement shall inure to the benefit of and be binding on each party, as well as its respective successors or assigns.

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Respondent accepts the terms of this Agreement on this 21<sup>st</sup> day of August, 2020.

Marc D. Hamburg  
Signature

MARC D. HAMBURG  
Respondent's Printed Name (or in the case of an entity, the name of Respondent's Duly Authorized Representative)

Senior Vice President - CFO  
Printed Title of Respondent's Duly Authorized Representative and Name of Entity (if applicable)



Please check this box if you have not enclosed payment with this Agreement and will instead be paying or have paid by electronic funds transfer (see paragraph 2(A)(ii) and the EFT Instructions enclosed with this Agreement).

Date: August 21, 2020

**Andrea M. Gacki** Digitally signed by Andrea M. Gacki  
Date: 2020.08.21 11:32:26 -04'00'

Andrea M. Gacki  
Director  
Office of Foreign Assets Control