

ENFORCEMENT INFORMATION FOR FEBRUARY 14, 2019

Information concerning the civil penalties process can be found in the Office of Foreign Assets Control (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.

ENTITIES – 31 CFR 501.805(d)(1)(i)

AppliChem GmbH Assessed a Penalty for Violating the Cuban Assets Control Regulations: OFAC has assessed a civil monetary penalty of \$5,512,564 against AppliChem GmbH (“AppliChem”), of Darmstadt, Germany, for 304 violations of the Cuban Assets Control Regulations, 31 C.F.R. part 515 (CACR). Specifically, between May 2012 and February 2016, AppliChem violated § 515.201 of the CACR when it sold chemical reagents to Cuba on 304 occasions (collectively referred to hereafter as the “Violations”).

On January 1, 2012, Illinois Tool Works, Inc. (ITW), a company based in Glenview, Illinois, acquired AppliChem, a German company that manufactures chemicals and reagents for the pharmaceutical and chemical industries. While conducting acquisition negotiations in December 2011, ITW discovered references to countries subject to U.S. economic and trade sanctions on AppliChem's website. On December 19, 2011, ITW warned AppliChem that it would be required to cease all Cuban transactions after its acquisition by ITW.

After finalizing the acquisition, ITW incorporated AppliChem into its Reagents Division, whose management is located in Spain. ITW agreed with AppliChem's former owners that they would stay on as manager-employees. On January 12, 2012, the General Manager of ITW's Reagents Division sent AppliChem's former owners a memorandum explaining ITW's guidelines for complying with U.S. sanctions, including the CACR.

Notwithstanding both of the above-referenced warnings, AppliChem continued to complete and collect on existing orders with Cuban nationals under pre-acquisition contracts following its acquisition by ITW. Upon discovering AppliChem's continued Cuban business, ITW's European legal department sent a third warning to AppliChem's former owners on April 5, 2012 that all sales to Cuba were to be ceased with immediate effect.

Subsequently, ITW submitted a voluntary self-disclosure to OFAC on January 23, 2013. In the 2013 disclosure, ITW stated that based on representations from AppliChem's former owners, “all [of AppliChem's] open [Cuba] transactions were cancelled[.]” On May 29, 2015, OFAC issued a cautionary letter to ITW in response to AppliChem's post-acquisition Cuba sales.

On or about January 27, 2016, an anonymous report was made through the ITW ethics helpline alleging that AppliChem continued to make sales to Cuba through an intermediary company in Berlin, Germany. ITW immediately began a full investigation, which revealed that AppliChem's former owners had continued AppliChem's Cuba business by creating a scheme that concealed

this business from ITW after specifically representing to ITW that it had ceased. The former owners of AppliChem are no longer employed by ITW.

Rather than ceasing sales to Cuba as ITW had directed, between February 2012 and April 2012, AppliChem designed and implemented what were called the “Caribbean Procedures” (whereby Cuba was referred to by the code word “Caribbean”), which made sure that no documents mentioning Cuba would be prepared or retained by AppliChem in connection with its continued business with the country. Pursuant to the Caribbean Procedures, AppliChem engaged an external logistics company and an independent hazardous materials consultant to prepare the necessary shipping documents and hazardous materials declarations, which previously had been handled internally.

Once AppliChem implemented the Caribbean Procedures, AppliChem senior management conducted both written and in-person training sessions for AppliChem’s staff, particularly those working in the logistics department, to help perpetuate the scheme and to ensure it would be fully concealed from ITW. The reasons for the implementation of the Caribbean Procedures were “well known to AppliChem staff during this time” and were described by AppliChem staff as an “open secret” at AppliChem.

The full investigation indicated that on two occasions prior to the ethics helpline report in 2016 (in March 2013 and June 2015), AppliChem employees reported to the General Manager of ITW’s Reagents Division in Spain some indications of AppliChem’s continued sales to Cuba. The Reagents Division General Manager sought assurances from the intermediary company that a pending shipment would not be diverted to Cuba and reminded local employees of ITW’s sanctions compliance policy, but did not initiate a fuller internal investigation at that time.

Between May 2012 and February 2016, AppliChem fulfilled Cuban orders on 304 invoices. The transaction value of the shipments made during this time was €2,833,701 (approximately \$3,433,495).

OFAC determined that ITW voluntarily self-disclosed the Violations on behalf of AppliChem, and that the Violations constitute an egregious case. The statutory maximum civil monetary penalty applicable in this matter is \$20,045,688. The base civil monetary penalty amount for the Violations is \$10,022,844.

The penalty amount reflects OFAC’s consideration of the following facts and circumstances, pursuant to the General Factors under OFAC’s Economic Sanctions Enforcement Guidelines, 31 C.F.R. part 501, app. A. OFAC determined the following to be aggravating factors: (1) the willful conduct of AppliChem’s management; (2) the use of written procedures to engage in a pattern of conduct in violation of the CACR; (3) AppliChem’s sales to Cuba of approximately \$3,433,495 in 304 transactions over the course of five years caused significant harm to the sanctions program objective of maintaining a comprehensive embargo on Cuba; and (4) the size and sophistication of AppliChem, with an average annual revenue of around \$23 million between 2012 and 2015, and the fact that it is a subsidiary of ITW, a large internationally active company.

OFAC determined the following to be mitigating factors: ITW's cooperation with OFAC on behalf of AppliChem by filing a thorough voluntary self-disclosure, providing prompt responses to requests for information, performing a thorough internal investigation, and by signing a tolling agreement on behalf of AppliChem.

This case demonstrates the importance of (i) implementing risk-based controls, such as regular audits, to ensure subsidiaries are complying with their obligations under OFAC's sanctions regulations, (ii) performing follow-up due diligence on acquisitions of foreign persons known to engage in historical transactions with sanctioned persons and jurisdictions, and (iii) appropriately responding to derogatory information regarding the sanctions compliance efforts of foreign persons subject to the jurisdiction of the United States.

For more information regarding OFAC regulations, please go to: www.treasury.gov/ofac.