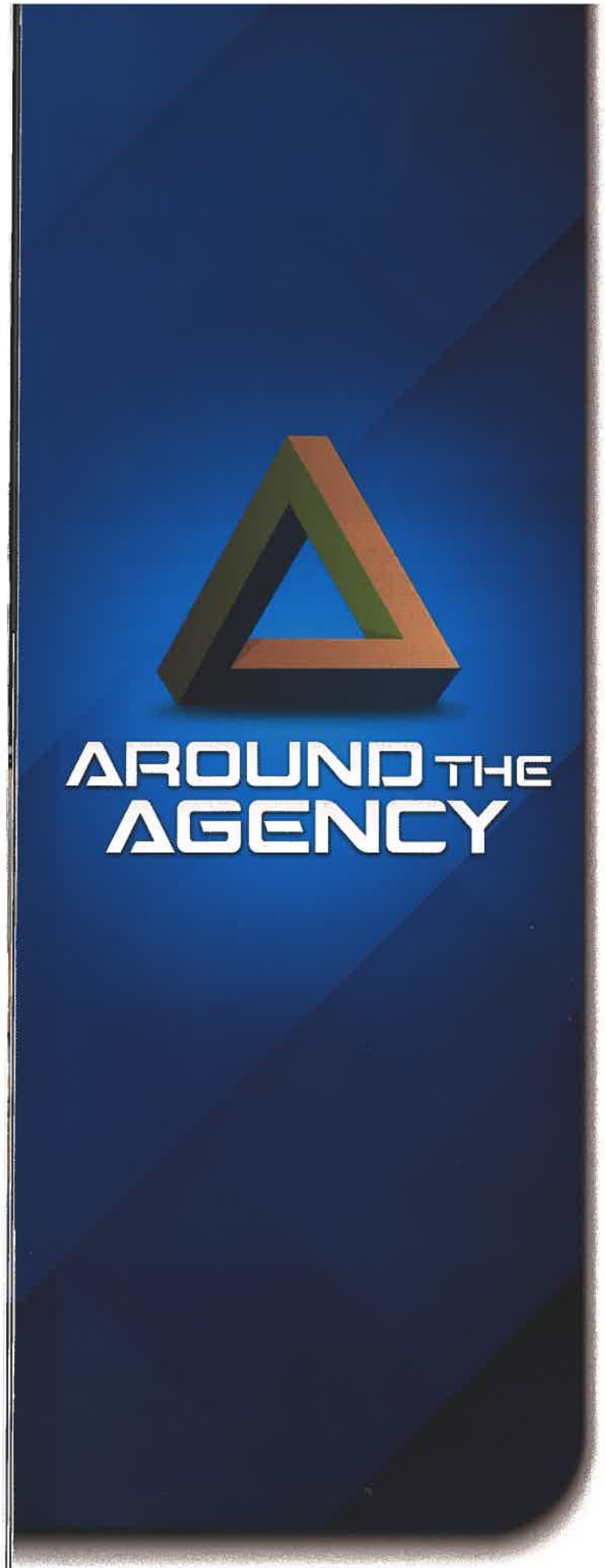

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HEAVY HIT

Automaker learns import fraud comes at a steep price

By Paul Koscak

Volkswagen recently made history thanks in large part to U.S. Customs and Border Protection.

It's the sort of history the company likely never expected—earning the largest customs penalty ever, which cost the automaker $4.3 billion in fines for fraudulently importing vehicles rigged to thwart U.S. emissions standards.

Volkswagen added a software package to thousands of its vehicles that modified the engine's exhaust when it detected the vehicle was undergoing an emission test. The scheme and the cover-up made international news in 2016. Meanwhile, six top Volkswagen executives await a court ruling on criminal charges for continuing the ploy that allowed the import of at least 590,000 vehicles over almost a decade.

Levied by CBP, the record penalty was part of a settlement with the agency, the Environmental Protection Agency and the Department of Justice after Volkswagen pleaded guilty to criminal customs fraud.

CBP not only enforces customs laws and regulations, it enforces health, safety and border security violations for other government agencies.

The cover-up became the crux of the crime and why CBP played a major role in the outcome.

Trust is central in the way CBP regulates trade and expects importers to operate with integrity because of the massive volume of goods imported into the country every day.

"We can't look at everything," said Jerry Malmo, the Office of Trade's director of the Civil Enforcement Division. "We trust companies are good corporate citizens and have good internal controls. This was quite a breach of that trust."

Volkswagen's blatant disregard for that principle was the driving force in CBP's strong stance for the huge penalty.

That bond was broken when "Volkswagen entities lied by submitting false information and omitting important information on importation," said Lesleyanne Koch Kessler, deputy associate chief counsel, enforcement and operations, for CBP's Office of Chief Counsel. "This was a border security issue. We need to know what's coming into our ports."

CBP first learned about the deception in September 2015, when the EPA cited the automaker for violating the Clean Air Act by not disclosing that numerous models—including Audi and Porsche—were equipped with "auxiliary emission control devices," software designed to defeat emissions tests. That would have required the company to report its own cover-up, an unlikely event.

On the road, the devices allowed engines labeled as EPA compliant, including the advanced technology vehicles the automaker touted as "green," to pollute way over the authorized limit. "Volkswagen claimed they had valid EPA certification on importation," Kessler said.

CBP immediately took custody of more than 16,000 fraudulently imported models, impounding them at ports of entry and other sanctioned areas throughout the country and launched an investigation to determine the scope of the violation.

It was an immense effort. Led by CBP's Automotive and Aerospace Center of Excellence, experts from the Offices of Field Operations, Trade, and Chief Counsel formed a trade enforcement team that invested more than a year searching for evidence. Summonses were issued to Volkswagen importers to turn over customs entry documents. "We wanted to know what they knew," Kessler said.

The team spent countless hours reviewing thousands of records to determine how many vehicles were involved, the models and their combined value, factors that also contributed to the record fine.

Collaboration was central to the team's success, explained Lisa Wallace who directs the Automotive and Aerospace Center of Excellence and Expertise. All offices and divisions connected to the investigation pooled their resources, worked as a unit and communicated frequently through conference calls.

"We were efficient," she said. "This helped us to stay on track. We shared updates and talked together about steps to take next." The team approach was so effective it's now among the center's best practices and is being used on new cases under review, Wallace added.

Kessler called the group "an excellent example of interoffice coordination for enforcement."

Within the $4.3 billion settlement, Volkswagen paid $1.45 billion in civil penalties for customs and Clean Air Act violations and $2.8 billion in criminal penalties.

Malmo said CBP stood prepared to litigate if the automaker refused to settle.

Volkswagen's membership in CBP trusted trader programs, which streamline the importing process, was revoked. The Office of Trade offers these benefits to importers who can show their supply chains are secure. Volkswagen would need to reapply for those privileges.

"The Volkswagen settlement sends a powerful message to importers around the world," said Scott Falk, CBP's chief counsel. "If you violate our customs laws and breach our trust, you'd better be prepared to pay a heavy price."