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Federal Department of Economic Affairs,  
Education and Research EAER

Secrétariat d'Etat à l'économie SECO  
Law

CH-3003 Berne

[REDACTED]

POST CH AG

Reference [REDACTED]

Your reference

Responsible for the file: [REDACTED]

Bern, September 19, 2023

## ENFORCEMENT MANDATE

**Pursuant to Art. 64 of the Federal Act of 22 March 1974 on Administrative Criminal Law (DPA; SR 313.0) in administrative criminal law proceedings conducted by the**

**[REDACTED]**

**State Secretariat for Economic Affairs (SECO)**

**against**

**[REDACTED]**

**for**

**Violation of Art. 6 of the Ordinance of 16 March 2022 imposing measures against Belarus (SR 946.231.116.9, hereinafter “the Ordinance”)**

State Secretariat for Economic Affairs SECO

[REDACTED]

Holzikofenweg 36  
3003 Bern

[REDACTED]

<https://www.seco.admin.ch>

## I. Faits

On the basis of the minutes of February 17, 2023 drawn up by Zurich Airport Customs and the additional information provided, it has been established that on February 15, 2023, [REDACTED] [REDACTED] concluded a sales contract (based on the [REDACTED] framework contract of February 10, 2017) with [REDACTED] for the supply of a (*set of embossing rollers for ITM HLP*) for a total amount of EUR 21,300.

Following the customs declaration [REDACTED] made electronically on 15 February 2023, the goods were automatically blocked and provisionally secured for the attention of SECO by Customs at Zürich Airport, as the delivery contained products (tariff number 8442.5000) that fell under the sales ban, Delivery, export, transit and transport as provided for in Art. 6 The Ordinance.

On the basis of these findings, SECO decided on 9 March 2023 to open an administrative criminal law investigation against [REDACTED] for alleged violation of Art. 6 of the Ordinance, and gave her 30 days to take a written position on the suspicions against her; produce an organizational chart setting out the responsibilities within [REDACTED] showing the administrative subdivisions, the hierarchical relationships and the respective competences of the various subdivisions; declare the identity of the persons responsible for the acts suspected of contravening the above-mentioned order; to inform SECO of the identity and full address of other persons who may, if any, be affected by the present proceedings and to produce all documents relating to this case which make it possible to clarify the facts recounted.

Since the case had already been sufficiently documented by customs and there was no need to sequester the temporarily seized goods, the goods were released on 9 March 2023 and returned to the sender for use in accordance with the law.

By letter of 30/31 March 2023, [REDACTED] sent SECO its position paper and the required information on the decision to open an administrative criminal investigation. In that position, the company argued, inter alia, that:

- The company is one of the leaders in the manufacture of embossing rolls.
- Its main customers are large international tobacco companies and their subsidiaries that use its products in particular for embossing cigarette packaging materials.
- The company has internal processes in place to monitor export regulations.
- The seized consignment had been destined for [REDACTED] [REDACTED] this type of product since 2004, but on an occasional basis, for this company.
- The Framework Agreement was signed with [REDACTED] 2017 and has been extended and updated by several Supplementary Agreements and Addendums.
- The product seized on 17 February 2023 is the first shipment to Belarus since the entry into force of the Ordinance, i.e. since 16 March 2022.

- [REDACTED] placed an order on 27 April 2022, designated as Specification 35 of the Framework Agreement, [REDACTED] countersigned on 11 May 2022 as an order confirmation.
- On 22 December 2022, [REDACTED] sent an update to Specification 35 of the Framework Contract with an extended delivery time, which replaced the previous version. [REDACTED] countersigned on January 27, 2023.
- [REDACTED] verified compliance with the current Ordinance before signing “Specification 35” and giving the go-ahead for export.
- According to the company, art. 6 of the Ordinance refers only to machinery. The product in question is not a machine within the meaning of Art. 6 of the Ordinance. Although art. 6 of the Ordinance, which is superior to Annex 4, refers only to machinery, while Annex 4, the title of which also refers only to machinery, lists components of machinery under “Designation”. The company considers Annex 4 to be the list of tariff numbers of the machines covered by Article 6, and the designation being the general description of the tariff numbers, and not an extension of the applicability of Art. 6 to machine components.
- Such an extension is not established in the eyes of society. Irrespective of the existence of such an extension, the designation in Annex 4 to tariff code 8442 gives the following exhaustive listing: ‘Machines, apparatus and equipment (other than machine tools of headings 8456 to 8465) for the preparation or manufacture of plates, plates, cylinders or other printing parts: plates, plates, cylinders and other printing parts: lithographic stones, plates, plates and cylinders prepared for printing (e.g. grained planning, polished)’.
- The product in question is not intended for printing but is a tool for embossing. Since machine components for embossing are not included in the exhaustive list in Annex 4, the product in question is therefore not covered by Annex 4 and is therefore not covered by Art. 6 of the Ordinance.
- In summary, therefore, the company is of the opinion that the shipment of the product in question to Belarus was authorized.

In a letter dated 3 April 2023, SECO informed the company that “although Art. 6 of the Ordinance refers only to “machinery”, the goods that fall within the scope of this provision must be identified on the basis of the list provided for in Schedule 4, which provides for the designation of the TN indicated. In this connection, it should be pointed out that if the annex indicates a tariff number without the indication ‘ex’, this means that all subcategories of that tariff number are concerned. Whereas, if the tariff is preceded by the word “ex”, only that specific tariff (or sub-tariff) falls within the scope of the ordinance. With respect to tariff code 8442, it is not preceded by the word “ex” in Appendix 4 of the Order, which means that also the subcategories of this tariff item are covered. [...] Based on the export list sent to SECO by the OFDF, the “set of embossing rollers” is classified under tariff number 8442.5000 and would therefore fall under the Ordinance.”

The company was also informed that if it did not agree with the classification of its products, it could submit a classification request to the FOCBS in order to obtain a binding classification decision.

The company proceeded with such a request for information, submitting to customs all the information necessary for its analysis.

On 26 May 2023, the FOCBS sent [REDACTED] a binding tariff notice stating that the embossing roller set falls under tariff number 8420.9120 (8420.9100 as of 1 January 2024).

In view of the company's doubts as to the accuracy of this classification, by email of 16 June 2023 the customs confirmed (with further explanation) that the classification under number 8420.9120 was correct.

Subsequently, the company informed SECO that it would not have asked the FOCBS to issue an appealable decision on the binding information of 26 May 2023.

On 21 August 2023, SECO therefore notified [REDACTED] of the final report relating to the investigation and by letter of 29 August 2023 the company stated that it was waiving the need for further measures of inquiry and emphasised that « *the shipment of the product was the result of a comprehensive upstream analysis of the regulatory environment and was based on the use of a tariff code that has been consistently accepted for several years by the customs authorities. The classification of our product according to the recent tariff information received by the FOCBS would not have changed our company's point of view, i.e. the possible export of the product. The only criticism that can therefore be made of our company is its interpretation of the regulatory provisions that led it to proceed, in its opinion with the right to send the product.* »

## **II. Legal**

### **Art. 6 of the Ordinance: Machines**

<sup>1</sup> *The sale, delivery, export, transit and transport of machinery referred to in Annex 4 to Belarus or intended for use in Belarus shall be prohibited.*

<sup>2</sup> *The provision, directly or indirectly, of technical assistance, brokerage services, financial means or financial assistance, including financial derivatives, as well as insurance and reinsurance products in connection with the activities referred to in the IA. 1 is prohibited."*

### **Annex 4 to the Ordinance : Machines**

<sup>8420</sup> *Calenders and rolling mills, other than for metal or glass, and rolls for such machines."*

### **Dispositions Pénales**

Anyone who violates the provisions of Art. 6 of the Ordinance is punishable by imprisonment for not more than one year or a fine of not more than 500,000 francs; if the offender acts negligently, the penalty is imprisonment for up to three months or a fine of up to CHF 100,000 (Art. 28 para. 1 of the Ordinance in conjunction with Art. 9 of the Federal Embargo Act, MBA); SR 946.231).

Pursuant to Art. 333 of the Swiss Criminal Code (SCC; SR 311.0), these threatening penalties will be adapted to the new types of sanctions provided for in the general part of the Criminal Code.

SECO supervises the implementation of the enforcement measures provided for in Articles 2 to 9, 10 to 14 and 16 (Art. 29 para. 1 of the Ordinance) and prosecutes and adjudicates infringements of Art. 9 and 10 Mb (Art. 16 (Art. 29 para. 1 of the Ordinance) and prosecutes and adjudicates infringements of Art. 9 and 10 Mb (Art. 28 para. 3 of the Ordinance). The Federal Act of 22 March 1974 on Administrative Criminal Law (DPA; SR 313.0) is applicable (Art. 14 para. 1 MbA).

### **III. Considerations**

#### **Objective Constituent Elements of an Infringement of Art. 6 of the Ordinance**

It follows from Art. 6 (1) of the Ordinance that the sale, delivery, export, transit and transport of the machinery listed in Annex 4 to Belarus or intended for use in Belarus is prohibited.

Annex 4 of the Ordinance refers to Customs Tariff 8420, which applies to calenders and rolling mills, other than for metals or glass, and cylinders for such machines.

In view of the above, having sold and attempted to have delivered to Belarus goods (set of embossing rolls for a total amount of EUR 21,300) the sale and export of which was prohibited (tariff number 8420.9120), [REDACTED] fulfilled the objective constituent elements of an infringement of Art. 6 of the Ordinance.

#### **Subjective elements of an infringement of Art. 6 of the Ordinance**

Unless otherwise expressly provided by law, only the perpetrator of a crime or offence who acts intentionally is punishable (Art. 12 para. 1 SCC). Art. 9 of the Embargo Act in conjunction with Art. 28 of the Ordinance punishes both intentional and negligent violation of the prohibitions provided for in art. 6 of the Ordinance.

Anyone who commits a crime or misdemeanour intentionally acts with knowledge and will. The perpetrator is already acting intentionally when he considers it possible to commit the offence and accepts it in the event that it occurs (Art. 12 para. 2 SCC). A person who acts negligently who, through culpable lack of foresight, commits a crime or misdemeanour without realizing the consequences of his act or without taking them into account. Lack of foresight is culpable when the offender has not taken the precautions required by the circumstances and by his personal situation (Art. 12 para. 3 SCC).

In the present case, [REDACTED] is not alleged to have intentionally infringed Art. 6 of the Ordinance. However, as a company active in international trade and with internal processes for monitoring export regulations, it had a responsibility to carefully analyse the embargo orders imposed by Switzerland and to take the necessary measures to avoid contravening them. This is particularly true in view of the new content of the Belarus Ordinance, which entered into force on 16 March 2022. In this regard, additional checks on the classification of its products before the conclusion of new orders to Belarus were reasonably required.

This lack of foresight is culpable within the meaning of Art. 12 para. 3 SCC and [REDACTED] has therefore fulfilled the subjective constituent elements of an infringement of Art. 6 of the Ordinance.

#### **IV. Sentencing**

When an offence is committed in the management of a legal person, the penal provisions are applicable to the natural persons who committed the act, in accordance with art. 6 para. 1 DPA. A company manager, employer, principal or representative who, intentionally or negligently and in breach of a legal obligation, fails to prevent or remove the effects of an offence committed by the subordinate, agent or representative, is subject to the criminal provisions applicable to the perpetrator who has acted intentionally or negligently (Art. 6 para. 2 DPA). If the fine does not exceed 5,000 francs and the investigation would make it necessary, in the case of persons punishable under Art. 6 DPA, measures of inquiry out of proportion to the penalty incurred, it is permissible to waive the prosecution of such persons and to order the legal person, the general or limited partnership or the sole proprietorship to pay the fine in their place (Art. 7 para. 1 DPA).

Given that a fine of up to CHF 5,000 is in any case permissible and that the investigation would make it necessary to deal with persons punishable under Art. 6 DPA of investigative measures out of proportion to the sentence to be imposed, if applicable, in accordance with Art. 7 para. 1 DPA, to hold [REDACTED] liable for infringements of Art. 6 of the Ordinance.

[REDACTED] was indeed guilty, as we have seen, of a lack of attention by failing to check precisely before the order was confirmed the tariff code relating to the goods it wanted to export to Belarus.

Fines not exceeding 5,000 francs are set according to the seriousness of the offence and the offence; it is not necessary to take into account other factors (Art. 8 DPA).

In this case, as we have seen, a breach of art. 6 of the Ordinance has been committed, a provision which aims, inter alia, to control the sale and export of machinery to Belarus.

Although the offence was committed negligently, the fault of [REDACTED] is of some significance. In this regard, account should be taken of the value of the blocked assets (EUR 21'300) and the fact that the error could have been avoided by prior checking and more thorough monitoring, which could be expected from an internationally active company such as [REDACTED]

In determining the sentence, it is necessary to take into account, in a mitigating sense, the fact that [REDACTED] acted under the influence of culpable negligence, that the company was cooperative throughout the proceedings, as well as the fact that this was an isolated case which had no consequences, since the export was blocked by customs at the Swiss border and the goods were subsequently returned to the sender for use in accordance with the law.

In view of the above, it appears appropriate to impose a fine of CHF 3,000 on [REDACTED].

#### **V. Costs of Proceedings**

Pursuant to Articles 94 and 95 DPA, the costs of the proceedings, which include the fees for decisions and pleadings, are to be borne by the convicted person.

These costs are set on the basis of Art. 64 and 94 DPA and Art. 7 para. 2 let. a and 12 para. 1 of the Ordinance of 25 November 1974 on costs and allowances in administrative criminal proceedings (SR 313.32), at 1,070 francs (i.e. a decision fee of 1,000 francs and a writing fee of 70 francs).

**In the light of these considerations,  
the State Secretariat for Economic Affairs (SECO)**

**pronounces:**

1. [REDACTED] was found guilty of violating Art. 6 of the Ordinance of 16 March 2022 instituting measures against Belarus.
2. [REDACTED] is ordered to pay a total fine of CHF 3,000.
3. In addition, the costs of the proceedings, which amount to 1,070 francs, including a decision fee of 1,000 francs and a writing fee of 70 francs, shall be borne by the convicted person.
4. This law enforcement mandate is hereby notified in duplicate to [REDACTED] [REDACTED] registered letter with acknowledgment of receipt).

**State Secretariat for Economic Affairs (SECO)**

[REDACTED] [REDACTED]

**Indication of Legal Remedies**

[REDACTED] may lodge an objection to this enforcement order within 30 days of its notification. Objections must be made in writing to the SECO Legal Service (State Secretariat for Economic Affairs, Legal Division, Holzikofenweg 36, 3003 Berne). The opposition must set out precise conclusions and the facts on which they are based; the means of proof must be indicated and, as far as possible, attached to the brief (art. 67 and 68 DPA).

At the request of [REDACTED], SECO may treat the opposition as a request for judgment by the competent court (art. 71 DPA).

If no opposition is lodged within the legal time limit, the enforcement order will be treated as a final judgment (art. 67 DPA). Within five days of the enforcement order coming into force, the total amount of CHF 4,070 must be credited to the account of the State Secretariat for Economic Affairs (SECO).