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Federal Department of Economic Affairs,
Education and Research DEFR
State Secretariat for Economic Affairs SECO
Law

CH-3003 Bern SECO stj POST CH AG

Reference SECO-471.4-2/32/70

Your reference :

Person responsible: [REDACTED]

Berne, September 28, 2023

REPRESSION WARRANT

in application of Art. 64 of the Federal Law of 22 March 1974 on
Administrative Penal Law (DPA; SR 313.0)

in administrative criminal proceedings brought by the

State Secretariat for Economic Affairs (SECO)

against

[REDACTED]

for

violation of Art. 11a para. 1 of the Federal Council Decree of 4 March 2022
on measures in connection with the Situation in Ukraine (SR 946.231.176.72,
hereinafter referred to as the "Ordinance")

State Secretariat for Economic Affairs SECO

[REDACTED]

Holikofenweg 36

3003 Bern

[REDACTED]

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

I. Introduction

1. By decision of 15 May 2023, the State Secretariat for Economic Affairs SECO initiated administrative criminal proceedings against [REDACTED] (hereinafter “[REDACTED]”) for alleged violation of Art. 11a para. 1 of the Ordinance of the Federal Council of 4 March 2022 on measures in connection with the Situation in Ukraine (SR 946.231.176.72, hereinafter “the Ordinance”)¹ and gave [REDACTED] a period of 30 days to take a position in writing and submit a series of information and documents.

2. By letter of 13 June 2023, [REDACTED] commented on the decision of 15 May 2023 to initiate the investigation. The arguments put forward by [REDACTED] are set out in footnote 18 below.

3. Considering the investigation to be complete, the SECO sent [REDACTED] the final minutes pursuant to art. 61 DPA on September 4, 2023. [REDACTED] has been informed of its right to comment on the final minutes, consult the exhibits and request further investigation within ten days of notification of the final minutes. Notification of the final minutes remained unanswered by the company [REDACTED].

II. In Fact

4. On 23 December 2023, the Federal Customs Administration informed SECO that, on 16 December 2022, a consignment of goods partly listed in Annex 23 to the Ordinance had been intercepted and blocked at the customs office of Geneva-Aéroport. This consignment contained – inter alia - products of headings 4016.93 (rubber seals) and 8481.20 (valves) of the Customs Tariff which are listed in Annex 23 to the Ordinance.

5. The export documents accompanying the blocked consignment refer to the sale, delivery and export by [REDACTED] of medical equipment intended for orthopaedics to a company established in the Russian Federation, namely [REDACTED] in Moscow. The above-mentioned documents contain, inter alia, the following information:

Goods:	3,750 pieces of valves [REDACTED] Tariff heading 8481.2090, unit price Euro 18.40 700 pieces of rubber gaskets [REDACTED] Tariff heading 4016.9300, unit price Euro 0.45
Selling price:	Euro 69'315.00
Exporter:	[REDACTED]
Destination:	[REDACTED] Moscow, Russian Federation
Freight forwarder:	[REDACTED] Geneva
	Customs declarant: [REDACTED]

6. By email dated 3 February 2023 [REDACTED] was informed that the goods concerned by this procedure (see note 5 above) may be released and returned for Use in accordance with the law. It has also been made mindful of the provision of art. 11a para. 4 of the Ordinance, according to which it is possible to submit a reasoned request for a derogation to SECO in order to be able to sell, deliver and export these goods lawfully in the Russian

¹ Available in all its versions under [SR 946.231.176.72 - Ordinance of 4 March 2022 instituting measures in connection with the Situation in Ukraine \(admin.ch\)](#)

Federation. On 10 March 2023, export permits were granted to [REDACTED] allowing the sale, delivery and export of those goods to the Russian Federation.

III. Legal

Art. 11a Commercial restrictions - goods intended for the strengthening of industry

7. Pursuant to Art. 11a para. 1, enters into force on 27 April 2022, the “sale, delivery, export, transit and transport of goods intended for the strengthening of industry referred to in Annex 23 to or for use in the Russian Federation are prohibited”. Pursuant to Article 11a para. 2, the “provision of Services of all kinds, including financial services, brokerage services and technical advice, as well as the provision of financial resources related to the goods referred to in para. 1 or the sale, export, transit, transport, supply, manufacture, maintenance and use of such goods to or for use in the Russian Federation shall be prohibited.”

8. Annex 23 contains the goods intended for the strengthening of industry affected by the prohibitions provided for in Art. 11a paras. 1 and 2 of the Ordinance. Annex 23 to the Ordinance is not published in the Official Collection or in the Systematic Collection of Federal Law, but can be found on SECO’s website Measures in connection with the Situation in Ukraine (admin.ch)

9. Pursuant to Art. 11a para. 4 of the Ordinance, SECO may, after consulting the competent departments of the FDFA and the FDF, authorise derogations from the prohibitions laid down in paras. 1 and 2 if this is necessary for medical or pharmaceutical purposes and for non-military end-use (let a) or humanitarian or evacutory purposes (let b).

Layout

10. Anyone who violates the provisions of Art. 11a of the Ordinance is punishable (Art. 32 para. 1 of the Ordinance in conjunction with Art. 9 of the Embargo Act, Embargo Act; SR 946.231).

11. SECO prosecutes and adjudicates infringements of Art. 9 and 10 Mb Act (Art. 32 para. 3 of the Ordinance); it may order seizures or confiscations (art. 32 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 LEmb)

VI. Considerants

Objective Elements of an Infringement of Art. 11a para. 1 of the Ordinance

12. The case in point concerns the sale, delivery and export of goods intended for the reinforcement of the industry referred to in Appendix 23 of the Ordinance to the Russian Federation or for use in that country.

Sales, Delivery and Export

13. The invoice accompanying the goods in question shows the sale, delivery and export of 3750 pieces of valves [REDACTED] at the unit price of Euro 18 40 and Customs Tariff Heading 8481.2090 and 700 pieces of rubber seals [REDACTED] [REDACTED] at the unit price of Euro 0.45 and of Customs Tariff Heading 4016.9300 of societe [REDACTED] to the company [REDACTED] Moscow [REDACTED] in Russian Federation.

Goods intended for the strengthening of industry referred to in Annex 23 to the Ordinance

14. Annex 23 lists as products covered by the prohibition of Art. 11 (1) of the Ordinance covers products falling under heading 4016.93 of the Customs Tariff, namely “seals of unhardened common rubber (excluding articles of cellular rubber)”, as well as products falling under heading 8431-20 of the Customs Tariff, i.e. “valves for hydraulic or pneumatic transmissions”.

15. The 3750 pieces of [REDACTED] valves per unit at a price of EUR 18.40 and tariff heading 8481.2090 and the 700 pieces of rubber seals [REDACTED] [REDACTED] at a unit price of Euro 0.45 and of Customs Tariff heading 4016.9300 are goods intended for the strengthening of industry referred to in Annex 23 to the Ordinance.

To or for use in the Russian Federation

16. As appears from the export documents accompanying the goods subject to the present procedure, the consignee of these goods is [REDACTED] in Moscow, Russian Federation.

17. The objective constituent elements of a Violation of Art. 11a para. 1 of the Ordinance are thus realised.

18. In its position paper of June 13, 2023, [REDACTED] emphasized the humanitarian background of [REDACTED]'s business as well as the fact that [REDACTED] operates exclusively to support and improve the quality of life of disabled people and that it collaborates closely with [REDACTED] [REDACTED] in the orthopedic field. [REDACTED] argues that the products concerned are intended for medical use as components which are assembled into pneumatic knee prostheses, and that these components include pneumatic valves and rubber seals, and concludes that [REDACTED] does not supply goods intended for the reinforcement of the industry covered by the prohibition in art. 11a of the Ordinance. Finally, [REDACTED] argues that the Federal Customs Administration and SECO have released the goods subject to the present administrative penal law proceedings and [REDACTED] is now using SECO's ELIC platform to continue its activities and obtain the necessary export permits.

19. It should be clarified that Annex 23 of the Ordinance lists the goods covered by the prohibition on the sale, supply and export of goods intended for the enhancement of industry, irrespective of the use made of those goods. However, a medical or humanitarian use of goods intended for the strengthening of industry listed in Annex 23 of the Ordinance is taken into account in para. 4 of Art. 11a of the Ordinance. Thus, derogations from the prohibitions provided for in paras. 1 and 2 of Art. 11a of the Ordinance may be granted, if this is necessary for medical or pharmaceutical purposes and for non-military end-use or for humanitarian or evacuation purposes (Art. 11a para. 4 lit. a and b of the Ordinance). However, in order to ensure that goods for the strengthening of industry listed in Annex 23 to the Ordinance may be lawfully sold, delivered and exported to the Russian Federation by virtue of the derogations provided for in para. 4, a request for a derogation must have been submitted to SECO prior to any sale, delivery and export, and SECO must have granted the necessary approval. It is not possible to legalize the sale, supply or export of goods listed in Annex 23 unlawfully by an authorization granted on a retroactive basis.

20. In the present case, there was no request for a derogation under Art. 11a para. 4 let. (a) or (b) of the Ordinance has not been submitted to SECO prior to the sale, delivery and export of the goods concerned.

21. The fact that the goods in question were issued at the beginning of February 2023 for a Use in accordance with the law is irrelevant to the question of the lawfulness of the sale, delivery and export of the goods in December 2022. Similarly, the fact that the same goods were subsequently lawfully delivered and exported pursuant to a derogation based on para. 4 of Art. 11a cannot legalise the sale of these goods in December 2022.

22. The objective constituent elements of an infringement of Art. 11a para. 1 of the Ordinance are thus realised.

Subjective Elements of a Violation of Art. 11a para. 1 of the Ordinance

23. 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 and 10 Mb in conjunction with Art. 32 of the Ordinance punish infringements of Art. 11a para. 1 of the Ordinance, whether intentionally or negligently.

24. Anyone who commits a crime or misdemeanour intentionally acts with conscience and will. The offender acts intentionally when he considers it possible to commit the offence and accepts it in the event that it occurs (Art. 12 para. 2 SCC). Anyone who commits a crime or a crime without being aware of the consequences of his act or without taking them into account acts negligently. Short-sightedness is culpable when the offender has failed to exercise the necessary precautions in the circumstances and in his personal circumstances (Art. 12 para. 3 SCC).

25. In the present case, [REDACTED] is not alleged to have intentionally infringed Art. 11a para. 1 of the Ordinance. In the case of this case, it is a negligent violation of Art. 11a para. 1 of the Ordinance at issue.

26. The electronic correspondence between [REDACTED] and SECO clearly shows the company's willingness to comply with Switzerland's sanctions in connection with the situation in Ukraine. Thus, on 1 January 2022, Mr [REDACTED] sent a letter to SECO seeking information on the lawfulness of his commercial activity with [REDACTED]

"... We need to send spare parts for knee prostheses to our manufacturer in Russia, with whom we have been working together since 2020. These knee prostheses will be assembled in Russia at our burrower's and then shipped back to us to finally deliver them to our customers.

Having become aware of the sanctions against Russia, we would like to confirm before our expedition that we are allowed to continue our humanitarian with this company called [REDACTED] ... or obtain a derogation if necessary" (email of 1 June 2022 from Mr [REDACTED] to SECO's Sanctions Sector).

On 2 June 2022, SECO informed [REDACTED] that goods intended for export to the Russian Federation at the time were covered by the prohibition of Art. 11a para. 1 of the Ordinance. At the same time, [REDACTED] was informed of the transitional provision contained in Art. 35 para. 10 of the Ordinance, according to which «art. 11a does not apply to transactions governed by a contract prior to 28 April 2022 and carried out until 29 July 2022 » (email of 2 June 2022 from Mr [REDACTED] du SECO to Mr [REDACTED] Subsequently, electronic correspondence was established between Mr [REDACTED] and Mr [REDACTED] if [REDACTED] did not require authorisation to proceed with the sale, to the delivery and export of the goods in question to the Russian Federation, which was not the case at the time (7 June 2022), in view of the above-mentioned transitional provision.

27. As is apparent from that correspondence set out in footnote 26, [REDACTED] was informed at the latest since the summer of 2022 (i) of the prohibition of Art. 11a para. 1 of the Ordinance, (ii) of the fact that the products manufactured by [REDACTED] were – at least partly – covered by this prohibition, and (iii) the fact that the transitional provision of Art. 35 para. 10 of the Ordinance applicable until 29 July 2022 at the latest. By selling, delivering and exporting goods listed in Annex 23 to the Ordinance for a total value of Euro 69,315 to a company located in the Russian Federation without carrying out the necessary checks, [REDACTED] failed to exercise the due diligence required by the circumstances and by his personal situation. This lack of foresight is culpable within the meaning of Art. 12 para. 3 SCC, and [REDACTED] [REDACTED] has therefore established the subjective constituent elements of a negligent violation of Art. 11a para 1 of the Ordinance.

V. Setting the Sentence

28. Anyone who commits a Negligible Violation of Art. 11 a of the Ordinance shall be punishable by imprisonment for a term not exceeding three months or a fine of not more than CHF 100,000 (Art. 9 para. 3 Mb in conjunction with Art. 32 para. 1 of the Ordinance) In accordance with Art. 333 of the Criminal Code, these threat penalties will be adapted to the new system of sanctions as provided for in the general part of the Criminal Code.

29. Art. 6 DPA is applicable to offences committed in companies (Art. 12 MbA). 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 (Art. 6 para. 1 DPA). The head of the company, employer, principal or representative who, intentionally or negligently and in breach of a legal obligation, fails to prevent an offence committed by the subordinate, agent or repentant or to remove its effects, falls within the scope of the penal provisions applicable to the perpetrator who has acted intentionally or negligently (Art. 6 para. 2 DPA). Where the head of the enterprise, the employer, the principal or the representative is a legal person, a general or limited partnership, a sole proprietorship or a collective body without legal personality, the af. 2 applies to the Organs and their members, to the managing associations, effective managers or liquidators at fault (Art. 6 para. 3 DPA).

30. Art. 7 DPA provides for the possibility of dispensing with the prosecution of persons punishable under Art. 6 DPA, and instead imposing a fine on the legal entity, where the relevant fine does not exceed CHF 5,000 and the investigation would require investigative measures out of all proportion to the penalty incurred in respect of persons punishable under Art. 6 DPA.

31. In the present case, it is not possible to determine with certainty whether the delivery of the products listed in Note 5 to a company located in the Russian Federation is due to non-compliance with internal guidelines, insufficient implementation of these directives in internal processes, establishment of such directives, Insufficient and inadequate compliance structures, lax enforcement of internal guidelines, insufficient control or a combination of all of these factors. In view of the above, it is not possible for SECO to identify the natural person or persons responsible for this infringement of Tart. 11a para. 1 of the Ordinance which is issued and the person(s) who must assume final responsibility for it. SECO notes that a fine of up to 5,000 Swiss francs may be imposed under Tart. 7 DPA, to be taken into account, as the investigation of persons punishable under art. 6 necessitates investigative measures out of all proportion to the penalty to be imposed. This justifies holding [REDACTED] responsible for the infringement of art. 11a para. 1 of the Ordinance.

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

33. Even if it is negligent, the fault committed by [REDACTED] cannot be considered of minor importance. In fact, [REDACTED] was warned in the summer of 2022 that after July 29, 2022, the sale, delivery and export of goods manufactured by its company could fall under the prohibition of art. 11a para. 1 of the Ordinance and require an export permit based on art. 11a para. 4 of the Ordinance. In view of the information in its possession, [REDACTED] should have, at the time of preparing the sale, delivery and export of the goods which are the subject of the present procedure, carried out the necessary checks to avoid any illegal behaviour and applied to SECO for the granting of an export permit based on art. 11a para. 4 of the Ordinance.

VI. Procedural Costs

34. Pursuant to Articles 94 and 95 DPA, the costs of the proceedings, which include the decision and chancery fees, are charged to the convicted person.

35. On the basis of Articles 64 and 94 DPA and Art. 7 para. 2 (a) and 12 para. 1 of the Ordinance of 25 November 1974 on Costs and Allowances in Administrative Criminal Proceedings (SR 313.32), these costs are set at CHF 1,270 (i.e. a decision fee of CHF 1,200 and a chancery fee of CHF 70).

**In response to these considerations,
the State Secretariat for Economic Affairs (SECO)**

pronounces:

1. [REDACTED] is found guilty of Violation of Art. 11a para. 1 of the Ordinance.
2. Pursuant to Art. 7 para. 1 DPA, [REDACTED] is ordered to pay a total fine of CHF 1,000.
3. In addition, the costs of the proceedings, which total 1,270 francs, i.e. a decision fee of 1,200 francs and a chancery fee of 70 francs, are charged to the convicted person.
4. The order for repression shall be notified in duplicate to [REDACTED] [REDACTED] [registered letter with acknowledgement of receipt].

Indication of Legal Remedies

[REDACTED] may lodge an objection against this enforcement order within 30 days of its notification. Objections must be addressed in writing to SECO's Legal Service (State Secretariat for Economic Affairs, Law Sector, Holzikofenweg 36, 3003 Bern) The objection must set out specific conclusions and the facts on which they are based; The evidence must be indicated and, as far as possible, attached to the FART brief. 67 and 68 DPA).

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

If no objection is lodged within the statutory period, the repression order will be treated as a final judgment (Art. 67 DPA). Within five days of the entry into force of the repression order, the total amount of CHF 2,270 must be credited to the account of the State Secretariat for the Economy SECO (IBAN CH7709000000300063895).

**State Secretariat for Economic Affairs SECO
Law Sector**

[REDACTED] [REDACTED]