

[LETTERHEAD]

CH-3003 Bern

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Registered letter with advice of delivery (AR)

[REDACTED]

Reference number: [REDACTED]

Your reference:

Clerk: [REDACTED]

Bern, February 19, 2024

Penalty Notice

pursuant to Art. 64 of the Federal Act of March 22, 1974 on Administrative Criminal Law (VStrR; SR 313.0) in administrative criminal proceedings

State Secretariat for Economic Affairs (SECO)

against

[REDACTED]

for

Violation of Art. 5 para. 1 let. a of the Ordinance of the Federal Council of March 4, 2022 on measures in connection with the situation in Ukraine (SR 946.231.176.72; hereinafter: "Ukraine Ordinance")

I. Facts of the Case

1. On December 11, 2023, the Federal Office for Customs and Border Security FOCBS (hereinafter “FOCBS”) informed SECO that on December 8, 2023, the Zurich Airport customs office provisionally seized goods intended for export in a consignment with consignment number [REDACTED] from [REDACTED] to [REDACTED], Russia. The contents of the shipment were 50 pieces of [REDACTED], 10 pieces of [REDACTED], 10 pieces of [REDACTED], 15 pieces of [REDACTED]. These items were electrical switches with a value of CHF 10,569.90 (see [REDACTED]).
2. By letter dated January 31, 2024, SECO informed the BAZG that it had released the goods and could return them to [REDACTED] for legitimate use.
3. By letter dated January 5, 2024, [REDACTED] informed SECO that it represented the interests of [REDACTED] and wanted to proactively clarify the facts with a letter and show that the delivery of the confiscated goods had occurred purely by mistake.
4. By order dated January 8, 2024, SECO opened administrative criminal proceedings against [REDACTED] and the persons responsible on suspicion of violating Art. 5 para. 1 let. a Ukraine Ordinance and requested them to comment on the alleged conduct within 30 days and to submit the requested information and documents.
5. In its letter dated January 5, 2024, [REDACTED] already acknowledges that (among other things) the export of the goods since January 25 of [REDACTED] dated January 22, 2024 (item 2) and from the submitted extract from the commercial register dated December 27, 2023 (enclosure 2) it follows that [REDACTED].
6. The investigations in these administrative criminal proceedings were concluded on January 31, 2024 with the final minutes. This was opened to [REDACTED] on the same day and he was given the opportunity to comment on it within 10 days, to inspect the files and to request a supplement to the investigation. By e-mail dated February 5, 2024, [REDACTED] stated that it would not comment on the final minutes.

III. Legal Bases

7. Violations under Art. 9 and 10 EmbG are prosecuted and assessed by SECO (Art. 32 para. 3 Ukraine Ordinance). Administrative criminal law (VStrR) is applicable (Art. 14 para. 1 EmbG). If an offense is committed while managing the affairs of a legal entity (...), the criminal provisions apply to the natural persons who committed the offense (Art. 6 para. 1 VStrR).
8. The sale, supply, export, transit and transportation of goods listed in Annex 1 to or for use in the Russian Federation are prohibited (Art. 5 para. 1 let. a Ukraine Ordinance). Annex 1 to the Ukraine Ordinance lists goods with the customs tariff number 8536.50 since January 25, 2023. Anyone who violates Art. 5 para. 1 let. a of the Ukraine Ordinance will be punished in accordance with Art. 32 para. 1 of the Ukraine Ordinance under Art. 9 EmbG (Federal Act of 22 March 2002 on the Enforcement of International Sanctions, Embargo Act, SR 946.231). The penalty for an intentional offense is a custodial sentence of up to one year or a fine (Art. 9 para. 1 EmbG) and for a negligent offense a fine of up to CHF 100,000 (Art. 9 para. 3 EmbG). Fines of

up to CHF 5,000 are to be assessed according to the seriousness of the offense and the degree of culpability; other grounds for sentencing do not have to be taken into account (Art. 8 VStR).

9. Unless the law expressly stipulates otherwise, only those who intentionally commit a felony or misdemeanor are liable to prosecution (Art. 12 para. 1 SCC). The negligent violation of Art. 5 para. 1 let. a Ukraine Ordinance is punishable (Art. 9 para. 3 EmbG / Art. 2 para. 3 EmbG). A felony or misdemeanor is committed intentionally by anyone who carries out the act with knowledge and intent. Anyone who considers the realization of the act to be possible and accepts it (Art. 12 para. 2 StGB) is already acting intentionally. A person commits a felony or misdemeanor negligently if he fails to consider the consequences of his conduct due to carelessness contrary to his duty or fails to take them into account. Carelessness is contrary to duty if the offender fails to observe the caution to which he is obliged under the circumstances and according to his personal circumstances (Art. 12 para. 3 SCC).

IV. Considerations

Objective Elements of the Offense

10. [REDACTED]. Therefore, the sale and shipment of the electrical switches to his customer, the Russian company [REDACTED], [REDACTED], is objectively attributable to him and the administrative criminal proceedings concerning these facts must be continued against him (Art. 6 para. 1 VStR). [REDACTED] attempted to deliver electrical switches with the customs tariff number 8536.50, which is listed in Annex 1 of the Ukraine Ordinance, to his customer in fulfillment of a purchase contract concluded with his customer. He thus fulfilled the objective elements of Art. 5 para. 1 let. a (Annex 1) of the Ukraine Ordinance, which [REDACTED] itself acknowledges in its statement of 5 January 2024 (para. 3).

Subjective Facts

11. [REDACTED] is not accused of having acted intentionally in the present case. It must be examined whether he has negligently fulfilled the elements of the sanction provision. The statements in the letter of 5 January 2024 (para. 3) and the submitted table with control mechanisms (enclosure 6) show that [REDACTED] did not realize that the customs tariff number 8636.50 has been listed in Annex 1 since 25 January 2023. He focused his search for sanctioned tariff numbers primarily on Annex 23 of the Ukraine Regulation. And - since the switches in question are used in [REDACTED] - he assumed that they do not constitute "goods for military and technological strengthening" according to Annex 1 of the Ukraine Regulation. However, as a professional distributor of commercial goods to Russia and also due to his subjective abilities, [REDACTED] should have recognized that the switches in question fall under Annex 1 of the Ukraine Ordinance, in other words, the carelessness is to be regarded as "contrary to duty" or negligent (Art. 12 para. 3 StGB), which means that the offence of Art. 5 para. 1 let. a / Annex 1 Ukraine Ordinance is also subjectively fulfilled.

Sentencing

12. According to [REDACTED] enclosure 4), the value of the sanctioned counters amounts to CHF 10,569.90. The counters were not delivered to Russia, which means that the intended sanction effect has been realized and the objective elements of the offence have not been

completely fulfilled (attempted stage). The objective offense is therefore in the low range. Failure to recognize that the switches are subject to a sanction provision is to be regarded as slight negligence. The subjective wrongfulness appears to be rather low. [REDACTED] has provided evidence that it has also involved third parties in order to ensure the compatibility of its business activities with sanctions measures (enclosures 7-9) and, according to its own statements, has previously refused deliveries to the same Russian customer in order not to commit a sanctions violation. The documents submitted and his aforementioned statements reveal his fundamental willingness to deal responsibly and carefully with sanctions to be complied with, his existing insight into his misconduct and his willingness to change, which will be taken into account to reduce the penalty. Finally, it must be taken into account that [REDACTED] was cooperative from the beginning of the proceedings.

13. Overall, [REDACTED]'s culpability is assessed as slight. The penalty for negligence is a fine (Art. 9 para. 3 EmbG). In the present case, this is in the lowest range of the abstract penalty framework. In consideration of the above sentencing factors, SECO considers the imposition of a fine of CHF 750 to be commensurate with culpability.

VI. Procedural costs

14. The costs of the present administrative penal proceedings are set at an adjudication fee of CHF 200 and a writing fee of CHF 50 (Art. 94 para. 1 VStR / Art. 6a f. and 12 of the Ordinance on Costs and Compensation in Administrative Penal Proceedings, SR 313.32). The total amount of CHF 250 is imposed on [REDACTED], as he is sentenced (Art. 95 para. 1 VStR).

Based on these considerations

the State Secretariat for Economic Affairs (SECO)

recognized:

1. [REDACTED] is declared guilty of violating Art. 5 para. 1 let. a Ukraine Ordinance.
2. [REDACTED] is sentenced to pay a fine of CHF 750.
3. The procedural costs of CHF 250, consisting of an adjudication fee of CHF 200 and a writing fee of CHF 50, are ordered to be paid by [REDACTED].
4. The present penalty notice shall be sent to [REDACTED] by registered letter with advice of delivery.

Notice of Right of Appeal

[REDACTED] may lodge an objection to the penalty notice within 30 days of its notification. The objection must be submitted in writing to the SECO Legal Service (State Secretariat for Economic Affairs SECO, Legal Division, Holzikofenweg 36, 3003 Bern). The objection must contain a specific request and state the facts on which it is based; the evidence should be specified and, if possible, attached (Art. 67 and 68 VStrR).

The objector may request that the objection be dealt with directly as a request for assessment by the competent criminal court (Art. 71 VStrR).

If no objection is lodged within the statutory period, the penalty notice is equivalent to a final judgment (Art. 67 para. 2 VStrR). The total amount of CHF 1,000 must then be transferred to the [REDACTED] account of the State Secretariat for Economic Affairs (SECO) within a further 5 days.

State Secretariat for Economic Affairs SECO

[REDACTED]

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