

[LETTERHEAD]

CH-3003 Bern

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Registered letter with advice of delivery (AR)

[REDACTED]

File number: SECO [REDACTED]

Your reference:

Clerk: [REDACTED]

Bern, March 13, 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

against

[REDACTED]

for

Violation of Art. 11a 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 October 28, 2022, the Federal Office for Customs and Border Security FOCBS informed SECO that on October 27, 2022, the St. Gallen / Liechtenstein customs office (St. Margrethen) provisionally seized a consignment intended for export from [REDACTED] (customs declaration [REDACTED] addressed to [REDACTED] Russia): The consignment contained 8,640 kg (net) [REDACTED] with tariff number 3824.9919. The [REDACTED] has a value of goods (according to the invoice [REDACTED] of EUR 19,612.80.
2. By letter from SECO dated November 27, 2023, the provisionally seized goods were released for lawful use at [REDACTED].
3. By order dated January 5, 2024, SECO opened administrative criminal proceedings against [REDACTED] on suspicion of violating Art. 11a of the Ukraine Ordinance and requested it to comment on the alleged conduct within 30 days and to submit the requested information and documents.
4. [REDACTED] submitted a statement on the alleged conduct (hereinafter: Statement) by letter dated February 7, 2024 and submitted various enclosures. This statement will be addressed in the following recitals (III.), insofar as legally relevant.
5. The investigations in these administrative criminal proceedings were concluded on February 19, 2024 with the final report. This was opened to [REDACTED] on the same day and it was given the opportunity to comment on it within 10 days, to inspect the files and to request a supplement to the investigation.
6. [REDACTED] refrained from submitting a statement on the final minutes of February 19, 2024 within the deadline and from exercising its other procedural rights in accordance with section 5 above.

II. Legal Bases

7. Violations under Art. 9 of the Federal Act on the Enforcement of International Sanctions (Embargo Act, EmbG, SR 946.231) are prosecuted and assessed by SECO (Art 32 para. 3 Ukraine Ordinance). The Federal Act on Administrative Criminal Proceedings (VStrR, SR 313.0) 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 for the strengthening of industry in accordance with Annex 23 to or for use in the Russian Federation are prohibited (Art. 11a para. 1 Ukraine Ordinance). Annex 23 to the Ukraine Ordinance lists goods with the customs tariff number 3824.99. Anyone who violates Art. 11a para. 1 of the Ukraine Ordinance will be punished in accordance with Art. 9 EmbG (Art. 32 para. 1 of the Ukraine Ordinance). The penalty is a custodial sentence of up to one year or a fine for intentional offenses (Art. 9 para. 1 EmbG) and a fine of up to CHF 100,000 for negligent offenses (Art. 9 para. 3 EmbG).

9. If an offense is committed while managing the affairs of a legal entity, the criminal provisions apply in principle to the natural persons who committed the offense (Art. 6 para. 1 VStrR). If a fine of no more than CHF 5,000 can be imposed and the investigation of the persons liable to prosecution under Art. 6 VStrR would require investigative measures that would be disproportionate to the penalty imposed, the prosecution of these persons may be dropped and the legal person may be ordered to pay the fine instead (Art. 7 para. 1 VStrR). Fines of up to 5'000 francs are to be assessed according to the seriousness of the offense and the degree of culpability; other grounds for sentencing need not be taken into account (Art. 8 VStrR).

10. Unless the law expressly provides otherwise, only those who intentionally commit a felony or misdemeanor are punishable (Art. 12 para. 1 SCC). The negligent violation of Art. 11a para. 1 of the 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).

III. Considerations

Objective Elements of the Offense

11. [REDACTED] shipped 8,640 kg of [REDACTED] with a goods value of EUR 19,612.80 (invoice [REDACTED]) in fulfillment of a purchase contract with [REDACTED] Moscow, Russia, on October 20, 2022. These goods bear the customs tariff number 3824.99, which is listed in the applicable Annex 23 Ukraine Ordinance on October 20, 2022 (date of seizure of the goods). The objective element of Art. 11a para. 1 of the Ukraine Ordinance (Annex 23) was fulfilled by this conduct.

Subjective Elements of the Offense

12. [REDACTED] is not accused that someone within the company acted intentionally in the present case. It must be examined whether the facts of Art. 11a para. 1 of the Ukraine Ordinance (Annex 23) were fulfilled negligently.

13. [REDACTED] emphasizes in its statement that it was in no way aware of an export ban or that the goods could be affected by the sanctions regime against Russia. Neither the company nor its employees were aware of any administrative offense in this context. Furthermore, [REDACTED] stated that the submitted organizational chart shows that a change of personnel took place during the period in question, [REDACTED] left the company at the end of September 2022. During the transition period, which also included the export of the goods in question, the position was managed on an interim basis. Due to this organizationally dynamic situation, it is possible that the flow of information and internal processes did not always run smoothly for a limited period of time. However, neither [REDACTED] nor its employees can be

blamed for this, especially as such transitional phases would naturally never run completely smoothly in any company.

14. The above statements [REDACTED] illustrate that the responsible persons of the company did not know before the sale or shipment of the goods on October 20, 2022 that the customs tariff number 3824 is listed in Annex 23 and that the sale and export of these goods to Russia is prohibited and punishable. However, it is not the actual knowledge of the persons concerned of the criminal nature of the sale and export transaction that establishes criminal liability, but it is sufficient if the knowledge of the criminal liability should have been present in the company with due diligence. This must be affirmed in the present case. A globally active company that is represented in several countries and sells goods to various countries (including Russia) can be expected to be aware of the applicable sanctions against Russia or that the responsible employees should have recognized in good time that the product sold [REDACTED] with tariff number 3824. 99 falls under Annex 23 of the Ukraine Ordinance - in other words, the carelessness within the company is to be regarded as “contrary to duty” or negligent (Art. 12 para. 3 StGB), which means that the elements of Art. 11 a para. 1 / Annex 23 Ukraine Ordinance are also subjectively fulfilled.

Sentencing

15. First of all, it must be examined whether individual or several persons can be identified within [REDACTED] to whom the criminal conduct can be attributed in the present case. [REDACTED] who is responsible for the conduct, it is not possible to disclose any information in this regard, as [REDACTED] is not aware of any criminally relevant conduct.

16. Based on the aforementioned statements [REDACTED], the criminal liability of individual persons within the company cannot be proven. In order to obtain additional and possibly sufficient information, additional investigative measures were necessary (such as the questioning of possible perpetrators and possible witnesses). As SECO is considering a maximum fine of CHF 5,000 (see “Sentencing” below), such further investigative measures are disproportionate. SECO therefore refrains from prosecuting the natural persons specifically responsible and instead imposes a fine on the legal entity [REDACTED] (Art. 7 para. 1 VStrR).

17. The value of the sanctioned goods amounts to EUR 19,612.80. The goods were not delivered to Russia, which means that the intended sanction effect has been realized. The objective wrongdoing is therefore in the low range. The failure to recognize the inclusion of the goods in Annex 23 of the Ukraine Regulation is to be regarded as slight negligence. The subjective wrongful act appears to be minor. The documents submitted and the explanations [REDACTED] show a fundamental willingness to deal responsibly and carefully with the sanctions to be complied with, which is taken into account to reduce the penalty. Overall, the culpability [REDACTED] is to be assessed as slight.

18. The penalty for negligence is a fine of up to CHF 100,000 (Art. 9 para. 3 EmbG). In the present case, the fine is in the lowest range of the penalty scale. Taking into account the seriousness of the offense and the degree of culpability (Art. 8 VStrR), SECO considers a fine of CHF 2,800 to be appropriate.

IV. Costs of the proceedings

19. The costs of the present administrative penal proceedings are set at an adjudication fee of CHF 900 and a clerical fee of CHF 60 (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 the procedural costs of CHF 960 is imposed on [REDACTED], as it is convicted (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. 11a of the Ukraine Ordinance.
2. [REDACTED] is sentenced to pay a fine of CHF 2,800
3. [REDACTED] is ordered to pay the procedural costs of CHF 960, consisting of an adjudication fee of CHF 900 and a clerical fee of CHF 60.
4. The present penalty notice is sent to [REDACTED] by registered letter with advice of receipt.

Right of Appeal

The person concerned may lodge an objection to the penalty notice within 30 days of it being issued. 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 3'760 must then be transferred to the State Secretariat for Economic Affairs (SECO) account [REDACTED] within a further 5 days.

State Secretariat for Economic Affairs SECO

[REDACTED]