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Federal Department of Economic Affairs,  
Education and Research DEFR

State Secretariat for Economic Affairs (SECO)  
Law

CH-3003 Berne SECO [REDACTED] POST CH AG

Reference : [REDACTED]

Your reference :

Person in charge of the file: [REDACTED]

Bern, 20 November 2023

## MANDATE OF REPRESSION

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

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

against

[REDACTED]

for

**violation of art. 11 para. 1 let. c of the Ordinance of March 16, 2022 imposing measures against Belarus (RS 946.231.116.9, hereinafter “the Ordinance”)**

State Secretariat for Economic Affairs SECO  
[REDACTED]  
Holzikofenweg 36  
3003 Berne  
[REDACTED]  
<https://www.seco.admin.ch>

## I. Facts

On May 25, 2023, the employee of the company [REDACTED] declared the following goods for import using customs declaration no. [REDACTED].

- Wooden sauna disassembled for transport: NT 4418.9900, gross weight 2400 kg, statistical value CHF 3'942.-, VAT value CHF 4'102.-, 40 packages.

The entire shipment consists of wooden elements, insulation, small porcelain parts and a sauna stove (including sauna stones).

On the basis of the minutes of May 25, 2023 drawn up by the Geneva Rive-Droite Customs and the additional information provided, it has been established that on May 5, 2023 the company [REDACTED] [REDACTED] (Belarus) sold the above-mentioned sauna to the company [REDACTED] for EUR 3000.

The goods were blocked as this delivery could have fallen foul of the prohibition on importing wood products laid down in art. 11 para. 1 let. c of the Ordinance.

On June 9, 2023, the goods were transferred under customs escort from Ferney-Voltaire customs to the bonded warehouse at [REDACTED].

Based on these findings, SECO decided on June 19, 2023 to open an administrative criminal law investigation against [REDACTED] for alleged violation of art. 11 of the Ordinance, and has given [REDACTED] for alleged violation of art. 11 of the Ordinance, and gave it 30 days to state its position in writing on the suspicions; produce an organization chart establishing the competences within [REDACTED] and showing the administrative subdivisions, the hierarchical relationships and the respective competences of the various subdivisions; to declare the identity of the persons responsible for the acts suspected of contravening the above-mentioned order; to communicate to SECO the identity and full address of other persons who may, where applicable, be concerned by the present proceedings, and to produce all documents relating to this matter which may help to clarify the facts recounted.

By letter dated September 12/13, 2023, [REDACTED], through its legal counsel, sent the SECO its position statement and the information required in connection with the decision to open an administrative criminal law investigation. In this statement, the company argued that:

- The company concluded the sales contract with [REDACTED], which was responsible for transporting the sauna to Switzerland, while the actual transport was handled by a [REDACTED] forwarding agent.
- [REDACTED] trusted the integrity of the transaction, including transportation, based on the reputation and expertise of [REDACTED].
- The document [REDACTED] specified that the point of pickup in charge of the sauna was in Kirghizstan.
  - Although [REDACTED] had its registered office in Belarus, [REDACTED] could not legitimately expect the goods to be shipped from or transit Belarus.
- [REDACTED] relied entirely on [REDACTED], which after learning of the blockage confirmed and justified in two that the sauna did not fall under the sanctions (it had already indicated this before [REDACTED]).

- All the evidence points to the total good faith of [REDACTED] “who was unaware that the sauna in question could not be legally imported into Switzerland.
- [REDACTED] is the sole partner, managing director and president of the company and managed the entire transaction.
- In the letter from [REDACTED] mentioned by [REDACTED], it is stated that the item has been assigned to TN 9406909006 (prefabricated building structures), as indicated in [REDACTED]. In the second letter, [REDACTED] points out that the item has been blocked because it has been assigned to TN 44 concerning wood, whereas this TN, on the basis of the explanatory notes, excludes items in group 94 (which would include prefabricated building structures).
  - Since the dismantled sauna is a prefabricated building structure and consists of several prefabricated elements made of different types of materials, according to the goods classification manual, it cannot be assigned to TN 44.

SECO has therefore contacted the OFDF to ask it to take a position on [REDACTED] considerations concerning the allocation of the property to TN 4418.9900.

The OFDF confirmed the sauna’s classification on the basis of tariff decision 584.119.1995.2, which states that an “*unassembled sauna, for installation inside buildings and consisting essentially of:*

- a) *wooden elements (e.g. plinths, supports, walls, doors), seats and bunks to be permanently fixed, and possibly a wooden floor and fence other than bamboo;*
- b) *a sauna stove (depending on its condition).*

*Small items of equipment such as sauna lamps, hourglasses, water buckets with pails, presented at the same time for customs clearance, have no influence on pricing.*

falls under TN 4418.9900.<sup>1</sup>

On the basis of the composition of the dismantled sauna which is the subject of these proceedings and the oral information provided by the importer to customs, it must be assumed that this is a sauna intended for installation inside buildings and not an outdoor sauna (independent, closed wooden construction) which could be classified as a “prefabricated construction” under tariff heading 9406.

On November 8, 2023, SECO therefore notified [REDACTED] of the final report of the investigation, and in a letter dated November 13/14, 2023, the company indicated that it was waiving its right to request further investigative measures, stressing that, in its opinion, “*only the seized wooden elements may be confiscated and destroyed, with the exception of the other elements, which must be returned.*

In this connection, it should be pointed out that accessories and other components of the unassembled sauna are also taken into consideration in tariff decision 584.119.1995.2, which

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<sup>1</sup> <https://www.bazq.admin.ch/bazq/fr/home/documentation/directives/d4-decisions-de-classement-des-marchandises.html>, IX. Wood, charcoal and articles of wood; cork and articles of cork; articles of straw and plaiting materials → 44. Bowls, charcoal and articles of wood.

subjects these goods to TN 4418.9900 for wood products. The unassembled sauna and its components and accessories must therefore be considered as a whole.

## **II. Law**

### **Art. 11 of the Ordinance: Other assets**

1. *The import, transport and purchase of the following goods originating in or coming from Belarus are prohibited:*

- a. *petroleum and petroleum products listed in Appendix 7;*
- b. *potassium chloride-based products (“potash”) referred to in Annex 8;*
- c. *wood products listed in Appendix 9;*
- d. *cement products listed in Appendix 10;*
- e. *steel products listed in Annex 11;*
- f. *rubber products referred to in appendix 12.*

2. *The direct or indirect provision of technical assistance, brokerage services, financial means or financial aid, including financial derivatives, as well as insurance and reinsurance products in connection with the activities referred to in par. 1 is prohibited.*

3. *The prohibition set out in Art. 1(a) does not apply to the purchase of petroleum and petroleum products from Belarus which are necessary for:*

- a. *meet the buyer’s essential needs in Belarus;*
- b. *humanitarian projects;*
- c. *carry out the official activities of Swiss diplomatic or consular representations, and perform official missions on behalf of the Confederation.*

### **Appendix 9 of the Ordinance: Wood products**

<sup>44</sup> *Wood, charcoal and articles of wood*

### **Penalties and measures**

Anyone who violates the provisions of Art. 11 of the Ordinance is liable to a custodial sentence of up to one year or to a fine; in serious cases, the offender is liable to a custodial sentence of up to five years or to a fine. If the offender acts negligently, the penalty is 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, LEmb; RS 946.231).

SECO supervises the execution of the coercive measures provided for in art. 2 to 24 and art. 27 (art. 29 para. 1 of the Ordinance), and prosecutes and judges breaches of art. 9 and 10 of the LMVG (art. 28 para. 3 of the Ordinance). It may order seizures or confiscations. The Federal Act of March 22, 1974 on Administrative Criminal Law (DPA; RS 313.0) is applicable (art. 14 al. 1 LEmb).

Material and assets subject to a coercive measure are confiscated even if no specific person is punishable, if no guarantee can be given that they will subsequently be used in accordance with the law. Confiscated equipment and assets, as well as any proceeds from their sale, are

transferred to the Confederation, subject to the application of the Federal Act of March 19, 2004 on the Sharing of Confiscated Assets. (Art. 13 al. 1-2 LEmb).

### **III. Recitals**

#### **Objective elements constituting an infringement of art. 11 of the Ordinance**

It follows from art. 11 para. 1 let. c of the Ordinance that the import, transport and purchase of Annex 9 wood products originating in or coming from Belarus are prohibited.

Annex 9 of the Ordinance refers to customs tariff 44, which covers wood, charcoal and articles of wood.

In view of the above, having purchased from a company based in Belarus and having had delivered to it goods (a dismantled sauna intended for installation inside buildings, valued at EUR 3,000), the purchase and import of which were prohibited (its tariff number being 4418.9900), [REDACTED] fulfilled the objective constituent elements of an infringement of art. 11 of the Ordinance.

#### **Subjective constituent elements of an offence under art. 11 of the Ordinance**

Unless the law expressly provides otherwise, only the perpetrator of a felony or misdemeanour who acts intentionally is liable to punishment (art. 12 para. 1 PC). Art. 9 of the Embargo Act, in conjunction with art. 28 of the Ordinance, punishes both intentional and negligent violations of the prohibitions set out in art. 11 of the Ordinance.

Anyone who commits a felony or misdemeanour knowingly and willingly is acting intentionally. The perpetrator is already acting intentionally when he considers it possible to commit the offence and accepts it should it occur (art. 12 para. 2 PC). Anyone who, through culpable short-sightedness, commits a felony or misdemeanour without realizing or taking into account the consequences of his or her act is acting negligently. Such short-sightedness is culpable when the perpetrator fails to take the precautions required by the circumstances and his personal situation (art. 12 al. 3 CP).

In this case, [REDACTED] is not accused of intentionally infringing art. 11 of the Ordinance. Nevertheless, as a company active in international trade, it was incumbent on it to carefully analyze the ordinances relating to embargoes instituted by Switzerland, to take the necessary measures not to contravene them, and not simply to trust its trading partners. This was particularly important in view of the new content of the Ordinance on Belarus, which came into force on March 16, 2022. Additional checks on the classification of products prior to the conclusion of a purchase contract with a company based in Belarus were in this respect reasonably required.

This short-sightedness is culpable within the meaning of art. 12 para. 3 of the Swiss Penal Code and [REDACTED] has therefore fulfilled the subjective constituent elements of an offence under art. 11 para. 1 let. c of the Ordinance.

### **IV. Sentencing**

Where an offence is committed in the management of a legal entity, the criminal provisions are applicable to the natural persons who committed the act, in accordance with art. 6 para. 1 DPA. A company director, employer, principal or representative who, intentionally or negligently

and in breach of a legal obligation, fails to prevent an offence committed by a subordinate, agent or representative, or to eliminate its effects, is subject to the criminal provisions applicable to the perpetrator who has acted intentionally or negligently (art. 6 al. 2 DPA). Where the fine in account does not exceed CHF 5,000 and the investigation would require investigative measures out of all proportion to the penalty incurred in respect of the persons liable to prosecution under art. 6 DPA, it is permissible to waive prosecution of these persons and instead order the legal entity, general or limited partnership or sole proprietorship to pay the fine (art. 7 para. 1 DPA).

Given that a fine of up to CHF 5,000 is applicable in any case, and that the investigation would require investigative measures out of all proportion to the penalty to be imposed on the persons punishable under art. 6 DPA, in accordance with art. 7 para. 1 DPA, [REDACTED] must be held liable for the breaches of art. 11 of the Ordinance.

[REDACTED] was guilty, as we have seen, of carelessness in failing to check the tariff code for the goods it wished to purchase and import from Belarus before concluding the purchase contract.

Fines not exceeding CHF 5,000 are set according to the seriousness of the offence and the fault; no other assessment factors need be taken into account (art. 8 DPA).

In this case, an infringement of art. 11 of the Ordinance was committed, a provision which, among other things, aims to control purchases and imports of "other goods" (including wood products) originating in or coming from Belarus.

Although the infringement was committed through negligence, [REDACTED]'s fault is of some significance. In this respect, the value of the blocked assets (EUR 3,000.-) and the fact that the error could have been avoided by more thorough due diligence and monitoring, which could be expected of an internationally active company such as [REDACTED], should be taken into account.

The fact that [REDACTED] acted under the influence of culpable negligence, that the company was cooperative throughout the proceedings, and the fact that this is an isolated case should be taken into account in a mitigating manner when determining the sentence.

In view of the above, it appears appropriate to impose a fine of 1,000 francs on [REDACTED].

## V. Forfeiture

The goods (a dismantled sauna intended for installation inside buildings, valued at EUR 3,000) blocked at the Geneva Rive-Droite customs office are goods under customs tariff number 4418.9900. Goods with customs tariff number 44 are listed in Annex 9 of the Ordinance on Belarus. Their import is therefore prohibited in accordance with art. 11. para. 1 let. c of the Ordinance on Belarus.

Subsequent legal use of these goods within the meaning of Art. 13 Para. 1 of the LEmb is not possible under these conditions. This same circumstance also threatens public order within the meaning of art. 69 para. 1 of the Swiss Criminal Code (SR 311.0). Based in particular on tariff decision 584.119.1995.2 (mentioned above), the dismantled sauna and its components and accessories are to be considered as a whole. Consequently, all goods blocked by customs must be confiscated and destroyed.

## **VI. Costs of Proceedings**

Pursuant to art. 94 and 95 of the DPA, the costs of the proceedings, including the decision and clerical fees, are to be borne by the convicted person.

On the basis of articles 64 and 94 DPA and articles 7 al. 2 let. a and 12 al. 1 of the ordinance of November 25, 1974 on costs and compensation in administrative criminal proceedings (RS 313.32), these costs are set at 580 francs (i.e. a decision fee of 500 francs and a clerical fee of 80 francs).

**In the light of these considerations**

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

**pronounces :**

1. [REDACTED] is found guilty of violating art. 11 para. 1 let. c of the Ordinance of March 16, 2022 imposing measures against Belarus.
2. [REDACTED] is ordered to pay a total fine of 1,000 francs.
3. The goods (dismantled wooden sauna and accessories) provisionally secured on May 25, 2023 by the Geneva Rive-Droite customs post are confiscated by SECO for destruction (art. 13 al. 1 LEmb and art. 69 CP).
4. The Federal Office of Customs and Border Protection (FOCP) is responsible for destroying the goods after this enforcement order has come into force.
5. In addition, the costs of the proceedings, which total CHF 580, including a decision fee of CHF 500 and a clerical fee of CHF 80, are to be borne by the condemned party.
6. Two copies of this repression mandate are hereby notified to the legal representative of [REDACTED].

(registered letter with acknowledgement of receipt).

**State Secretariat for Economic Affairs SECO**

**[REDACTED] [REDACTED]**



### **Indication of Remedies**

[REDACTED] may object to this enforcement order within 30 days of its notification. Objections must be submitted in writing to the SECO Legal Service (State Secretariat for Economic Affairs, Legal Division, Holzikofenweg 36, 3003 Berne). The opposition must state 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 process 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 1,580 must be credited to the account of the State Secretariat for Economic Affairs (SECO).