

**[LETTERHEAD]**

**CH-3003 Bern**

**Reference : [REDACTED]**

**POST CH AG**

**Your reference :**

**Person in charge : [REDACTED]**

**Bern, February 26, 2024**

**Enforcement mandate**

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

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

against

[REDACTED]

for

**violation of art. 11a of the Ordinance of March 4, 2022 instituting measures in connection with the situation in Ukraine (RS 946.231.176.72, hereinafter “the Ordinance”)**

## I. Facts

On June 27, 2023, the Federal Office of Customs and Border Protection (FOCP) blocked the export of various spare parts for dental equipment, including gaskets, gasket sets and valves (Edec definitive export declaration no. [REDACTED]) to Russia, on the grounds that some of the goods contained in this consignment might have fallen within the prohibition on the sale and export of goods intended for the strengthening of industry laid down in art. 11a of the Ordinance.

On the basis of the minutes dated June 27, 2023 and the additional documentation supplied with the export declaration, it has been established that on June 22, 2023, [REDACTED] sold to the company [REDACTED] goods for dental equipment with a total value of EUR 17,950.30 [REDACTED] The value of the contested goods (o'ring TN 4016.9300 in various sizes, gasket cover TN 4016.9300, gasket set [REDACTED] TN 8484.9000, prop. valve pneumatic System TN 8481.2090, pressure regulators sub-assembly TN 8481.1090, cartridge kit [REDACTED] TN 8484.9000) would amount to approximately EUR 3'536.-.

As it was not to be expected that the goods would have been used as evidence in the present administrative criminal proceedings for suspected infringement of art. 11a of the Ordinance on Ukraine, the goods were not sequestered and were released on August 28, 2023 and returned to the sender/seller for use in accordance with the law.

On the basis of these findings, SECO decided on August 28, 2023 to open an administrative criminal law investigation against [REDACTED] for alleged violation of art. 11 a of the Ordinance, and gave it 30 days in which to state its position in writing on the suspicions against it; 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 ordinance; 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 case which may help to clarify the facts recounted.

In the meantime, the Federal Office of Customs and Border Protection has notified SECO of an export attempt by [REDACTED], which was blocked on July 28, 2023, as it could fall within the scope of art. 9 of the Ordinance. On the basis of the report dated August 3, 2023 and the additional documentation supplied with the export declaration [REDACTED]), it was found that on June 27, 2023, [REDACTED] sold dental equipment to [REDACTED] for a total value of EUR 8,941.86 [REDACTED]. The value of the disputed goods, i.e. 2 inline regulators 4.5bar (declared with TN 9026.2000), amounted to EUR 97. An authorization based on art. 9 al. 6bis let. b of the Ordinance was not required.

By letter dated October 19, 2023, the company [REDACTED] was asked to comment on this second export, and given that the case had already been sufficiently documented by customs and that there was no need to sequester the provisionally seized goods, the goods were released on October 19, 2023 for use in accordance with the law.

By letter dated November 13/14, 2023, [REDACTED] sent SECO its position paper and the required information concerning the decision to open an administrative criminal law investigation. In this statement, the company pointed out in particular that:

- [REDACTED] notes that the above-mentioned goods are subject to the export prohibitions set out in the Ordinance. On the one hand, their export is the result of a registration error, respectively an error resulting from differences between the code used by the customs tariff and that used by the Ordinance.
- Concerning the Product [REDACTED] regulator inline 4.5bar, customs code: 9026.2000: the HS code registered in the [REDACTED] system was erroneous. Due to human error, [REDACTED] declared HS code 9026.2000 on the invoice instead of HS code 8481.1010 for [REDACTED]. The [REDACTED] item is in fact a “pressure reducer” within the meaning of tariff heading 8481.1010 and should have been declared as such. This error led to a loophole in the internal controls of goods subject to sanctions, and was only spotted once the shipment had been blocked at customs. The error has since been corrected.
- Concerning the products “o’ring” (TN 4016.9300), gaskets (TN 4016.9300), gaskets for dental appliances [REDACTED] (TN 8484.9000), pneumatic valves (TN 8481.2090), “pressure regulators sub-assembly” (TN 8481.1090), cartridge kit for [REDACTED] (TN 8484.9000):
  - When checking the above-mentioned items, the person in charge searched the text of the various items concerned in Appendix 23 by referring to the customs tariff, apparently similar to the tariff used by the Ordinance. It turns out, however, that the customs tariff includes a period between the two groups of figures (XXXX.XX). However, Appendix 23 lists the customs tariff numbers without a dot between the two groups of digits, but with a single space (XXXX XX).
  - Consequently, searches in the text of the person in charge each time produced a negative result, suggesting that the items in question were not listed in Appendix 23. Unaware of her error, she validated the shipment of the goods for export. The differences in format between the customs tariff and the tariff provided for in the Ordinance raise the question of the predictability of the penalty measures provided for in the Ordinance. Indeed, the error made at [REDACTED] is a direct result of the difference in format between the customs tariff and the Ordinance.
  - In fact, SECO's decision uses the format of the customs tariff and not that of the Ordinance, demonstrating the confusion that exists on this point.
- All the disputed goods are spare parts for dental or medical devices manufactured by [REDACTED]. The company only manufactures medical and dental products. In these fields, the Ordinance provides for the possibility of granting derogations (art. 11a para. 4 let. a of the Ordinance) and thus allowing the export of products,

even if they appear on the list of products whose export is prohibited, in particular when this prohibition is intended to avoid reinforcing the Russian industry.

- The disputed goods were thus sent solely for the purpose of being used as parts, or as exchanges for devices manufactured by [REDACTED], i.e. medical or dental equipment. Art. 11a para. 4 let. a of the Ordinance allows SECO to authorize derogations from the export ban on goods listed in Annex 23 if this is necessary for medical or pharmaceutical purposes and for a non-military end use.
- This would be the case here, and [REDACTED] is requesting retroactive authorization to export the disputed goods.
- The total value is modest, amounting to EUR 3,536 and CHF 97. These are small amounts in view of the activity [REDACTED] of exports to Russia.
- [REDACTED] has set up a system for monitoring sanctions, and regularly organizes training sessions and follow-up meetings. [REDACTED] is also in regular contact with SECO regarding implementation of the Ordinance.
- [REDACTED] has set up a clear organization to ensure that goods exported to Russia are controlled. The control of exports to Russia is carried out by a specially trained Customer Service department.
  - All Customer Service staff dealing with exports to Russia are familiar with the applicable rules and appendices. They have been made aware of the frequent changes in the goods listed and how to search for goods.
  - The Quality and Regulatory Affairs Department ensures that our products are properly registered in accordance with current legislation.
  - The specific follow-up process for disputed goods has involved a large number of people, which prevents their precise and exhaustive identification.
  - In order to raise staff awareness of applicable regulations and ensure best practice in this area, [REDACTED] regularly organizes training sessions and meetings on the subject, using both internal and external speakers.
- In order to ensure these best practices and to be certain of complying with the regulations in force, [REDACTED] has regularly requested the support and advice of SECO.
- In addition, [REDACTED] has decided, as a precautionary measure, not to expand its market in Russia, and has refused to send its products to a new distributor located in Russia, pending greater certainty concerning the present procedure and the possibilities of selling medical and dental devices in Russia, including spare parts for repairs, in compliance with current legislation. Following

the complications associated with exporting to Russia, [REDACTED] has specifically appointed a person to be responsible for sanctions controls in connection with the war in Ukraine, in the person of [REDACTED], also Chief Operating Officer.

- In addition, [REDACTED] has appointed an external company, [REDACTED], specializing in the implementation of improvement processes, to ensure and implement more effective controls, particularly in relation to sanctions. Experts in logistics and import-export will be present at the company several days a week, in principle starting this month, to advise on the improvements to be made. These specialists will provide targeted support at several levels within the company, including analysis of the company's organization, export processes, IT/ERP system and operations. Their tasks will include raising awareness and providing ongoing training for all those involved in the export process.
- In conclusion, [REDACTED] assures that it will do its utmost to be diligent and comply with current regulations concerning sanctions against Russia. The export of the disputed goods is the result of errors which escaped [REDACTED]'s vigilance, despite the control and training system in place.
  - These errors can be partly explained by a difference in format between the customs tariff and the tariff provided for in the Ordinance, which adds to the complexity already inherent in the sanctions system and further increases the risk of errors.
- Furthermore, insofar as medical equipment for non-military end-uses is concerned, a derogation is possible on the basis of art. 11a para. 4 let. a of the Ordinance, which [REDACTED] respectfully requests.
  - As [REDACTED]'s sole activity is the manufacture and marketing of dental and medical devices, which are subject to derogation under the Ordinance, [REDACTED] hopes to be able, once it has full approval from SECO, to resume its exports of spare parts, which are currently blocked pending clarification of the present procedure.
- In any event, [REDACTED] regrets these errors and has already undertaken to strengthen its system for implementing and monitoring sanctions in collaboration with SECO and customs representatives, by appointing [REDACTED] as the person responsible within the company for compliance with sanctions against Russia, and by commissioning a third-party company, [REDACTED], to improve its sanctions-related processes.
- If a retroactive exemption were to be refused, in view of the minor nature of the errors in question, the low value of the disputed assets and the measures taken by [REDACTED], these errors would only have to be considered from the point of view of negligence.

On January 9, 2024, SECO sent [REDACTED] the final report on the investigation. As the company had not taken a position on the final official report, it did not request any further investigative measures.

## II. Law

### Art. 11a of the Ordinance: Goods intended for industrial reinforcement

*1 The sale, delivery, export, transit and transport of goods intended for the reinforcement of industry, as listed in Appendix 23, to or for use in the Russian Federation are prohibited.*

*2 The provision of services of any kind, including financial services, brokerage services and technical advice, as well as the granting of financial means related to the goods referred to in para. 1 or to the sale, export, transit, transport, supply, manufacture, maintenance and use of the said goods to or for use in the Russian Federation are prohibited.*

*2bis The direct or indirect sale, licensing or other transfer of intellectual property rights or business secrets, as well as the granting of rights to consult or reuse any material or information protected by intellectual property rights or constituting business secrets, in connection with the goods referred to in para. 1 or with the supply, manufacture, maintenance and use of such goods, to any natural or legal person, entity or establishment in the Russian Federation or for use in the Russian Federation are prohibited.*

*3 The prohibitions laid down in paragraphs 1 and 2 do not apply to goods and services which are necessary for the official activities of diplomatic or consular representations of Switzerland or its partners in the Russian Federation, or of international organizations enjoying immunities in accordance with international law.*

*4 SECO may, after consultation with the relevant departments of the FDFA and the FDF, authorize derogations from the prohibitions in paras. 1 and 2 if necessary:*

*a. for medical or pharmaceutical purposes and for non-military end-use;*

*b. for humanitarian or evacuation purposes, or*

*c. for the exclusive use of Switzerland in fulfilling its maintenance obligations in areas which are subject to a long-term rental agreement between Switzerland and the Russian Federation, or*

*d. for the establishment, operation, maintenance, fuel supply, reprocessing and safety of civil nuclear capacities, and for the further design, construction and commissioning required for the realization of civil nuclear facilities, for the supply of precursor materials for the production of medical radioisotopes and similar medical applications, or of critical technologies for monitoring radiation in the environment, as well as for civil nuclear cooperation, in particular in the field of research and development.*

*5 It may, after consulting the relevant departments of the FDFA and the FDF, authorize derogations from the prohibitions laid down in paragraphs 1 and 2 for:*

*a. goods of tariff heading 8417 20 if they are used by natural persons in their households for the manufacture of bakery products, pastries or cookies;*

*b. goods from Chapters 72, 84, 85 and 90 of the Customs Tariff, provided that they are indispensable for the production of titanium goods required in the aeronautical industry, and that no other source of supply exists.*

#### Annex 23 of the Ordinance: Goods for industrial reinforcement

*4016.93 unhardened vulcanized rubber gaskets*

*8481.10 Pressure reducing valves*

*8481.20 Valves for oleohydraulic or pneumatic transmissions*

*8484 Metal-plastic gaskets; sets or assortments of gaskets of different compositions, put up in pouches, envelopes or similar packings; mechanical seals*

#### Penalties and measures

Anyone who violates art. 11a 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 perpetrator acts negligently, the penalty is a fine of up to CHF 100,000 (art. 32 para. 1 of the Ordinance in conjunction with art. 9 of the Federal Embargo Act, LEmb; RS 946.231).

SECO supervises the implementation of the coercive measures provided for in art. 2a, 4 to 6, 9 to 28f and 29c to 30d (art. 31 para. 1 of the Ordinance) and prosecutes and judges breaches of art. 9 and 10 of the Federal Embargo Act (art. 32 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).

### III. Considerations

#### Objective constituent elements of an offence under art. 11a of the Ordinance

According to art. 11a of the Ordinance, the sale, delivery, export, transit and transport of goods intended for the reinforcement of industry listed in appendix 23 to the Russian Federation or intended for use in this country are prohibited.

Based on the findings of the investigation :

- [REDACTED] sold and tried to have delivered to the company [REDACTED] among others, o'ring (TN 4016.9300) in various sizes, gasket cover (TN 4016.9300), gasket set [REDACTED] (TN 8484.9000), prop. valve pneumatic system (TN 8481.2090), pressure regulators sub-assembly (TN 8481.1090), cartridge kit for [REDACTED] (TN 8484.9000), the value of which amounted to approximately EUR 3'536.- and were covered by appendix 23 of the Ordinance.

- [REDACTED] sold and tried to have delivered to the company [REDACTED], among others, 2 Regulator inline 4.5bar (TN 8481.1010, incorrectly indicated with TN 9026.2000), worth EUR 97.- and covered by appendix 23 of the Ordinance.

An authorization pursuant to art. 11a para. 4 of the Ordinance was not required for these exports, and a retroactive authorization cannot be issued to regularize exports.

[REDACTED] has therefore fulfilled the objective constituent elements of an infringement of art. 11a of the Ordinance.

#### Subjective elements of an offence under art. 11a 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. 32 of the Ordinance, punishes both intentional and negligent violations of the prohibitions set out in art. 6 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 by his personal situation (art. 12 al. 3 CP).

In this case, [REDACTED] is not accused of having intentionally violated art. 11a of the Ordinance. Nevertheless, as a company active in international trade and with internal procedures for monitoring export regulations, 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 to apply in advance for the necessary authorizations to conclude contracts and deliver goods. These additional checks and requests prior to the conclusion of new orders to Russia were in this respect reasonably required. Despite the difference between the text of Appendix 23 of the Ordinance and the numbering system provided for in the Tares, a simple, more precise check would have revealed that the disputed goods did indeed fall within the scope of the Ordinance. Moreover, in case of doubt, the matter could have been quickly resolved by contacting the OFDF or SECO.

This short-sightedness is culpable within the meaning of art. 12 para. 3 of the Swiss Criminal Code, and [REDACTED] has therefore fulfilled the subjective constituent elements of an offence under art. 11a 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. The company director, 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 representative, or to eliminate its effects, is subject to the criminal provisions applicable to the perpetrator who has acted intentionally or negligently (art. 6 a). 2 DPA). 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 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 event, and that the investigation would require investigative measures out of all proportion to the penalty to be imposed on the persons liable under art. 6 of the Ordinance, it is appropriate, in accordance with art. 7 para. 1 of the Ordinance, to hold [REDACTED] liable for the breaches of art. 11a of the Ordinance.

[REDACTED] was guilty of carelessness in failing to check precisely, before confirming orders, the customs tariff numbers applicable to the goods it wished to export to Russia, and in failing to apply for the necessary authorizations.

Fines not exceeding CHF 5,000 are set according to the seriousness of the offence and the fault; it is not necessary to take into account other elements of assessment (art. 8 DPA).

In the present case, as we have seen, an infringement of art. 11a of the Ordinance was committed, a provision which aims in particular to control sales and exports of goods intended to strengthen the industry to Russia.

Although the infringement was committed through negligence, [REDACTED]'s fault is of some significance. In this respect, the value of the blocked goods (EUR 3536.- + 97.-) 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.

In fixing the penalty, account should be taken, in a mitigating sense, of the fact that [REDACTED] acted under the influence of culpable negligence, that the company was cooperative throughout the proceedings and reacted by putting in place additional control and monitoring measures, and of the fact that this was an isolated case which had no consequences, given that the exports were first blocked by customs and then the goods were released for use in accordance with the law.

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

#### VI. Costs of proceedings

Pursuant to art. 94 and 95 of the DPA, the costs of the proceedings, which include the costs of the decision and clerical fees, are to be borne by the condemned party.

These costs are fixed, 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 indemnities in administrative penal procedure (RS 313.32), at 590.- francs (i.e. a decision fee of 500.- francs and a clerical fee of 90.- francs).

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

**pronounces :**

1. [REDACTED] is found guilty of violating art. 11a of the Ordinance of March 4, 2022 instituting measures in connection with the situation in Ukraine.
2. [REDACTED] is ordered to pay a total fine of CHF 1,000.
3. In addition, the costs of the proceedings, totalling CHF 590, including a decision fee of CHF 500 and a clerical fee of CHF 90, are to be borne by the defendant.
4. The present repression order is notified to [REDACTED] (registered letter with acknowledgement of receipt).

**State Secretariat for Economic Affairs SECO**

[REDACTED]

Indication of remedies

[REDACTED] may lodge an objection to the present repressive 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 treat the opposition as a request for judgment by the competent court (art. 71 DPA).

If no objection 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 1,590 must be credited to the account of the State Secretariat for Economic Affairs (SECO).