

Seizure and criminal proceedings in Switzerland

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

When customs officers detect a suspected violation of export control or sanctions law, the first step is usually the provisional seizure of the goods. The Customs Act empowers the FOCBS to seize goods, means of transport and documents that may serve as evidence or that are likely to be confiscated. The office then informs SECO, which is the competent authority for the investigation of most offences under the Goods Control Act and the Embargo Act. The proceedings follow the Federal Act on Administrative Criminal Law, under which the administrative authority conducts the investigation and may issue a penalty order. In serious cases, or where the accused requests a judicial decision, the matter goes to the cantonal criminal courts or, for certain offences, to the Federal Criminal Court in Bellinzona.¹

The criminal provisions themselves were sketched in Part G. Article 14 of the Goods Control Act punishes the intentional manufacture, brokering, export or transit of goods without the required licence, or in breach of conditions, with imprisonment or a fine, and provides for higher penalties in serious cases, for example when the offender acts on a commercial basis. Article 9 of the Embargo Act punishes intentional violations of the sanctions ordinances in a similar way, with an aggravated penalty for serious cases. Negligent violations are punishable by fines. In addition, Article 15 of the Goods Control Act addresses violations connected with weapons of mass destruction, which carry the highest penalties of the regime. The precise penalty ranges have been adjusted over time and should be checked against the current version of each act.²

Confiscation is a significant consequence in practice. Goods that were exported or were about to be exported in violation of the law may be confiscated, while the proceeds of the offence may be forfeited under the general provisions of the Swiss Criminal Code. For a company, the confiscation of a consignment of specialised machinery can cause greater

damage than the fine. The proceedings also carry reputational consequences, since SECO publishes annual figures on the cases it has pursued, although it does not usually name the companies concerned. A case that reaches the courts becomes public through the published judgment, which may be anonymised but can still identify the parties in a small market.³

Defence in such proceedings requires a combination of skills that is rare. The lawyer must understand the technical classification of the goods, the structure of the control lists and the sanctions ordinances, the procedure under the Federal Act on Administrative Criminal Law and the interaction with foreign proceedings, since the same facts often concern German or French law as well. Cross-border cases of this kind belong to the practice field of the author, who works at the intersection of customs criminal law, sanctions and export control on both sides of the Rhine. No individual case is discussed here. The general observation is that most proceedings arise from errors in classification, from incomplete screening of counterparties or from a failure to recognise that a familiar customer has changed its ownership or its own customers.⁴

1 Notes

1. On seizure by the customs authorities, see Articles 104 et seq. CA; on the investigation of offences under the GCA and the EmbA by SECO and the application of the ACLA, see Article 18 GCA and Article 14 EmbA; on the jurisdiction of the Office of the Attorney General of Switzerland in certain cases, see the same provisions. Article numbers to be verified. ↩
2. Articles 14 and 15 GCA and Articles 9 and 10 EmbA; on the penalty ranges and their amendment, see the current versions in the Classified Compilation of Federal Legislation (SR 946.202 and SR 946.231). Penalty ranges to be verified. ↩
3. On confiscation and forfeiture, see Articles 69 et seq. of the Swiss Criminal Code (SCC/StGB, SR 311.0) in connection with Article 2 ACLA; on SECO's reporting on criminal cases in export control and sanctions matters, see its annual reports. To be verified. ↩

4. General observation on the typical origins of export control and sanctions proceedings; see the annual reports of SECO and of the German Federal Office for Economic Affairs and Export Control (BAFA) on enforcement priorities. To be verified. ↩

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