



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

From : Presidency
To : Delegations
Subject : Implementing certain export restrictions – Luxury Goods

1. Within the framework of the Common Foreign and Security Policy (CFSP), the EU applies restrictive measures in pursuit of the specific CFSP objectives set out in the Treaty on European Union. Such restrictive measures consist *inter alia* of export restrictions.
2. One of export restrictions currently in force in the field of restrictive measures is the prohibition to export luxury goods, listed in Annex III of the Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea (hereinafter referred to as "the Regulation"), to the Democratic People's Republic of Korea.
3. Delegations already had a first exchange of views on the implementation of this restriction in Relex/Sanctions (see document 10858/07). In addition, the Commission organized in September 2007 through DG TAXUD (B4) a seminar on the TARIC (Seminar on Improving TARIC Data, held in Larnaca (CY), 27-28 September 2007). One of the seminar's conclusions was that issues such as this one should be discussed at the EU level.
4. To follow up on those discussions, the Presidency would propose to explore this issue further with a view to finding an appropriate way forward.

5. The Regulation provides in Article 4 that "it shall be prohibited to sell, supply, transfer or export, directly or indirectly, luxury goods, as listed in Annex III, to North Korea." Annex III lists 22 luxury goods to which the above restriction applies. Since they are not numerous it is worth mentioning them at this point:

| | |
|---------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|
| 1. Pure-bred horses | 2. Caviar and caviar substitutes |
| 3. Truffles and preparations thereof | 4. High quality wines (including sparkling wines), spirits and spirituous beverages |
| 5. High quality cigars and cigarillos | 6. Luxury perfumes, toilet waters and cosmetics, including beauty and make-up products |
| 7. High quality leather, saddlery and travel goods, handbags and similar articles | 8. High quality garments, clothing accessories and shoes (regardless of their material) |
| 9. Hand-knotted carpets, handwoven rugs and tapestries | 10. Pearls, precious and semi-precious stones, articles of pearls, jewellery, gold- or silversmith articles |
| 11. Coins and banknotes, not being legal tender | 12. Cutlery of precious metal or plated or clad with precious metal |
| 13. High quality tableware of porcelain, china, stone- or earthenware or fine pottery | 14. High quality lead crystal glassware |
| 15. High end electronic items for domestic use | 16. High end electrical/electronic or optical apparatus for recording and reproducing sound and images |
| 17. Luxury vehicles for the transport of persons on earth, air or sea, as well as their accessories and spare parts | 18. Luxury clocks and watches and their parts |
| 19. High quality musical instruments | 20. Works of art, collectors' pieces and antiques |
| 21. Articles and equipment for skiing, golf, diving and water sports | 22. Articles and equipment for billiard, automatic bowling, casino games and games operated by coins or banknotes |

6. The Council adopted Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1, as amended, hereinafter referred to as "the Nomtar regulation"), in which it establishes the Combined Nomenclature (CN) on the one hand, and on the other hand an Integrated Tariff of the European Communities (hereinafter referred to as "TARIC"). TARIC has been introduced so as to enable the Member States to have in one place all of the relevant EC legal acts on export or import of goods and to thereby ensure unified implementation.

7. The Nomtar regulation provides in Article 6 that "the TARIC shall be established, updated, managed and disseminated by the Commission, which shall, wherever possible, use computerized means. The Commission shall, in particular, take the necessary steps to:

- (a) integrate all measures contained in this Regulation or shown in Annex II thereto into the TARIC,
- (b) attribute TARIC codes and TARIC additional codes,
- (c) update the TARIC immediately,
- (d) disseminate in electronic format changes to the TARIC immediately."

8. The Nomtar regulation further provides in Article 5 that "the TARIC shall be used by the Commission and the Member States for the application of Community measures concerning importation into and exportation from the Community." In order for the relevant national customs authorities to establish which Community measures apply to which goods at import or export to another country, they refer to the relevant tariff code from the Nomtar regulation, as shown by the following graphic:

| CN code | Description | Conventional rate of duty (%) | Supplementary unit |
|-------------------|-----------------------------------------------|-------------------------------|--------------------|
| 1 | 2 | 3 | 4 |
| 0101 | Live horses, asses, mules and hinnies: | | |
| 0101 10 | - Pure-bred breeding animals: | | |
| 0101 10 10 | -- Horses ⁽¹⁾ | Free | p/st |
| 0101 10 90 | -- Other | 7,7 | p/st |
| 0101 90 | - Other: | | |
| | -- Horses: | | |
| 0101 90 11 | --- For slaughter ⁽²⁾ | Free | p/st |
| 0101 90 19 | --- Other | 11,5 | p/st |
| 0101 90 30 | -- Asses | 7,7 | p/st |

9. As mentioned above, Annex III of the Regulation contains descriptions of goods to which the export prohibition applies, but without referring to the relevant tariff codes. As a result, these goods have not been integrated by the Commission (B4 DG TAXUD) into the TARIC. This increases significantly the possibility that the regulation is not applied in a uniform manner in the Member States. Without reference to the relevant TARIC codes and the fact that descriptions of goods are very broad, the scope of the export ban can be interpreted differently. In addition, since the measures are not included in a central computerized system it is much more difficult for the competent authorities to be informed of them, which is one of the reasons for which TARIC was created. The said situation could even lead to the non-implementation of the Regulation, in particular where the exercise of such a broad discretion given to the competent authorities could give rise to court proceedings seeking to challenge the Regulation for lack of providing proper legal certainty.
10. On the basis of the above considerations, the Presidency proposes to partners the following way forward with regard to the issue presented above:

(a) Amend Annex III of the Regulation

- 10.1. This means changing Annex III in such a manner that the descriptions of goods would correspond to those in the CN and adding appropriate tariff codes to the goods listed. It should be mentioned by way of example that the following goods listed in Annex III are described so that they can relatively easily be attributed a tariff code, since they match descriptions from the CN:

0101 10 – Pure-bred breeding animals:

0101 10 10 – – Horses

1604 30 – Caviar and caviar substitutes

0709 59 50 – – – Truffles (without preparations)

Chapter 71

Natural or cultured pearls, precious or semi-precious stones, precious metals, metals clad with precious metal, and articles thereof; imitation jewellery; coin

Chapter 97

Works of art, collectors' pieces and antiques

10.2. According to Article 13(c) of the Regulation, the Commission can amend Annex III in order to refine or adapt the list of goods included therein, according to any definition or guidelines that may be promulgated by the Sanctions Committee and taking into account the lists produced by other jurisdictions, or to add the reference numbers taken from the Combined Nomenclature as set out in Annex I to Regulation (EEC) No 2658/87, if necessary or appropriate.

(b) Provide general guidance

10.3. Additionally to (a) and taking into account that export/import restrictions are frequently part of the restrictive measures adopted, general guidance could also be provided by amending Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) in the Framework of the EU Common Foreign and Security Policy (document 15114/05, hereinafter referred to as "the Guidelines") which provide guidance on common issues and present standard wording and common definitions that may be used in legal instruments implementing restrictive measures.

10.4. Guidance relating to exports of goods is provided in Section III/C of the Guidelines. Paragraph 64 provides *inter alia* that "future lists defining the scope of specific export or import control regimes may constitute a useful reference for specific export or import bans, if it is considered necessary to ban all trade of the specific, controlled category in relation to a particular country, in order to achieve the objectives of the CFSP." The said paragraph could be amended by inserting appropriate wording which would standardize the provision of tariff information when adopting regulations.

10.5. On the basis of the above considerations, the Guidelines could be amended by inserting a new third sentence in paragraph 64, which could read:

"The lists of goods which are subject to a specific export/import ban should be described in a way which corresponds to the descriptions used in Council Regulation (EEC) No 2658/87."