Commission Regulation (EC) No 117/2008 of 28 January 2008 amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

COMMISSION REGULATION (EC) No 117/2008

of 28 January 2008

amending Council Regulation (EC) No 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 329/2007[(1)], and in particular Article 13(a) and (b) thereof,

Whereas:

(1) According to Article 2 of Regulation (EC) No 329/2007, Annex I to that Regulation should list the goods and technology, including software, whose sale, supply, transfer or export to the Democratic People's Republic of Korea, or North Korea, is prohibited in accordance with determinations made by the competent Sanctions Committee of the United Nations or by the UN Security Council.

(2) The UN Security Council determined on 14 October 2006, when it adopted Resolution 1718, that the goods and technology set out in UN documents S/2006/814 and S/2006/815 should be subject to the ban. The competent Sanctions Committee determined on 1 November 2006 that the goods and technology set out in UN document S/2006/853 should also be subject to the ban.

(3) However, according to Article 2 of Regulation (EC) No 329/2007, Annex I should not include goods and technology included in the Common Military List of the European Union[(2)].

(4) In order to facilitate application, Annex I to Regulation (EC) No 329/2007 should present the goods and technology subject to the ban by reference to Annex I to Council Regulation (EC) No 1334/2000 setting up a Community regime for the control of exports of dual-use items and technology[(3)].

(5) Bulgaria, Austria and Sweden requested that their websites indicating the competent authorities be inserted in the list set out in Annex II to Regulation (EC) No 329/2007 and Estonia and Hungary asked for corrections as regards their websites,

HAS ADOPTED THIS REGULATION:

Article 1

1 Annex I to Regulation (EC) No 329/2007 is hereby replaced by the text in Annex I to this Regulation.

***Changes to legislation:** There are outstanding changes not yet made to Commission Regulation (EC) No 117/2008. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

2 Annex II to Regulation (EC) No 329/2007 is hereby replaced by the text in Annex II to this Regulation.

Article 2

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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ANNEX I

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Goods and technology referred to in Articles 2 and 3

INTRODUCTORY NOTES

Where possible, the items in this Annex are defined by reference to the list of dual-use items set out in Annex I to Council Regulation (EC) No 1334/2000, as amended by Council Regulation (EC) No 1183/2007[(4)].

The descriptions of the items in this Annex are often, but not always, identical or similar to descriptions of the items set out in the list of dual-use items. Each description is based as much as possible on that of the first dual-use item referred to. Where there are differences between the two descriptions, the description of the goods or technology found in this Annex shall be decisive. For the sake of clarity, an asterisk indicates that a description is based on the description of the dual-use item referred to, but contains different values for the technical parameters used or omits or adds specific elements.

If only part of the scope of the dual-use item referred to is covered by an entry in this Annex, the reference number taken from the list of dual-use items is preceded by "*ex*".

For the definitions of terms between "double quotation marks" please refer to Regulation (EC) No 1183/2007.

This Annex does not include goods and technology (including software) included in the Common Military List of the European Union[(5)]. In accordance with Article 1(1)(a) of Common Position 2006/795/CFSP[(6)], the Member States of the European Union will prohibit the direct or indirect supply, sale or transfer of such goods and technology to the Democratic People's Republic of Korea.

General Notes

1. For control or prohibition of goods which are designed or modified for military use, see the relevant list(s) of controls or prohibitions on military goods maintained by individual Member States. References in this Annex that state "See also Military Goods Controls" refer to the same lists.

2. The object of the prohibitions contained in this Annex should not be defeated by the export of any non-prohibited goods (including plant) containing one or more prohibited components when the prohibited component or components are the principal element of the goods and can feasibly be removed or used for other purposes.

N.B.: In judging whether the prohibited component or components are to be considered the principal element, it is necessary to weigh the factors of quantity, value and technological know-how involved and other special circumstances which might establish the prohibited component or components as the principal element of the goods being procured.

3. Goods specified in this Annex include both new and used goods.

Nuclear Technology Note (NTN)

(To be read in conjunction with Section I.0.B.)

The sale, supply, transfer or export of "technology" directly associated with any goods whose sale, supply, transfer or export is prohibited in Section I.0.A is prohibited according to the provisions of Category I.0.

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"Technology" for the "development", "production" or "use" of goods under prohibition remains under prohibition even when applicable to non-prohibited goods.

The approval of goods for export granted in accordance with Article 5 of Regulation (EC) No 329/2007, also authorizes the export to the same end-user of the minimum "technology" required for the installation, operation, maintenance and repair of the goods.

Prohibitions on "technology" transfer do not apply to information "in the public domain" or to "basic scientific research".

General Technology Note (GTN)

(To be read in conjunction with Sections I.1B, I.2B, I.3B, I.4B, I.5B, I.6B, I.7B and I.9B.)

The sale, supply, transfer or export of "technology" which is "required" for the "development", "production" or "use" of goods whose sale, supply, transfer or export is prohibited in Categories I.1 to I.9, is prohibited according to the provisions of Categories I.1 to I.9.

"Technology""required" for the "development", "production" or "use" of goods under prohibition remains under prohibition even when applicable to non-prohibited goods.

Prohibitions do not apply to that "technology" which is the minimum necessary for the installation, operation, maintenance (checking) and repair of those goods which are not prohibited or whose export has been authorised in accordance with Regulation (EC) No 329/2007.

Prohibitions on "technology" transfer do not apply to information "in the public domain", to "basic scientific research" or to the minimum necessary information for patent applications.

General Software Note (GSN)

(This note overrides any prohibition within sections I.0B, I.1B, I.2B, I.3B, I.4B, I.5B, I.6B, I.7B and I.9B.)

Categories I.0 to I.9 of this list do not prohibit "software" which is either:

a. Generally available to the public by being:

   1. Sold from stock at retail selling points, without restriction, by means of:

      a. Over-the-counter transactions;

      b. Mail order transactions;

      c. Electronic transactions; or

      d. Telephone order transactions; and

   2. Designed for installation by the user without further substantial support by the supplier; or

b. "In the public domain".

I.0 NUCLEAR MATERIAL, FACILITIES AND EQUIPMENT

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I.0A

GOODS

No	Relevant item(s) from Annex to Regulation (EC) No 1183/2007	Description
I.0A.001	0A001	"Nuclear reactors" and specially designed or prepared equipment and components therefor, as follows: a. "Nuclear reactors" capable of operation so as to maintain a controlled self-sustaining fission chain reaction; b. Metal vessels, or major shop-fabricated parts therefor, specially designed or prepared to contain the core of a "nuclear reactor", including the reactor vessel head for a reactor pressure vessel; c. Manipulative equipment specially designed or prepared for inserting or removing fuel in a "nuclear reactor"; d. Control rods specially designed or prepared for the control of the fission process in a "nuclear reactor", support or suspension structures therefor, rod drive mechanisms and rod guide tubes; e. Pressure tubes specially designed or prepared to