Commission Implementing Regulation (EU) No 775/2014 of 16 July 2014 amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

COMMISSION IMPLEMENTING REGULATION (EU) No 775/2014

of 16 July 2014

amending Council Regulation (EC) No 1236/2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 1236/2005 of 27 June 2005 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment[(1)], and in particular Article 12(2) thereof, read together with Article 3 of Regulation (EU) No 37/2014 of the European Parliament and of the Council of 15 January 2014 amending certain regulations relating to the common commercial policy as regards the procedures for the adoption of certain measures[(2)],

Whereas:

(1) Regulation (EC) No 1236/2005 imposes a prohibition on exports of goods which have no practical use other than for the purpose of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment and controls on exports of certain goods that could be used for such purposes. It respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union, in particular respect for and protection of human dignity, the right to life and the prohibition of torture and of inhuman or degrading treatment or punishment.

(2) The lists of goods subject to the controls and to the prohibition have been reviewed in consultation with a group of experts.

(3) It is generally accepted that ordinary handcuffs can be used as restraints in law enforcement and such handcuffs are regular equipment for law enforcement authorities. The UN Standard Minimum Rules for the Treatment of Prisoners prohibit using chains or irons as restraints and provide that handcuffs and other restraints shall never be applied as a punishment. Using restraints other than chains and irons is only allowed for certain specific purposes, in particular as a precaution against the escape of a prisoner during transfers, or in order to prevent a prisoner from injuring himself or others.

(4) Thumb and finger cuffs and neck restraints are not considered admissible for use in law enforcement, whereas using leg restraints for law enforcement is usually not considered admissible. Serrated thumb and finger cuffs, thumb and finger screws, bar fetters and

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weighted leg restraints are more likely to cause severe pain or suffering than other thumb and finger cuffs and other leg restraints because of their characteristics.

(5) Using a combination of mechanical restraints is more likely to cause severe pain or suffering, e.g. if handcuffs and ankle cuffs are linked together behind the back. Such restraining techniques often involve a risk of asphyxiation, especially if neck restraints are used.

(6) It is therefore necessary to prohibit the trade in thumb and finger cuffs, thumb and finger screws, bar fetters and weighted leg restraints. Taking into account that their use may exceptionally be justified, exports of other shackles and cuffs which are not normal handcuffs should be controlled.

(7) Such controls are also appropriate for exports of individual cuffs or rings, such as neck restraints or the rings of leg restraints.

(8) The definition of ordinary handcuffs should provide more clarity on the range of handcuffs whose exports are not subject to control by defining the size of the individual cuffs.

(9) Using mechanical restraints such as handcuffs in order to shackle a prisoner to a fixed object anchored to either a floor, wall or ceiling is not an acceptable restraining technique. It is therefore necessary to prohibit the trade in cuffs that are designed to be so anchored.

(10) Like combinations of mechanical restraints, multipoint restraint devices are more likely to cause severe pain or suffering than, e.g. ordinary handcuffs. Restraint chairs, shackle boards and shackle beds restrict movement of the prisoner much more than simultaneous application of, e.g. handcuffs and ankle cuffs. The inherent risk of torture or inhuman treatment increases when this restraining technique is applied for longer periods. It is therefore necessary to prohibit the trade in restraint chairs, shackle boards and shackle beds.

(11) Chairs, boards and beds fitted exclusively with straps or belts should be exempt from this prohibition as in certain circumstances their use may be justified for short periods of time, e.g. to prevent patients in a state of agitation from causing injury to themselves or to other persons. However, applying straps, belts or any other restraints on patients lacks any therapeutic or medical justification.

(12) Cage beds and net beds are not an appropriate means for restraining patients or prisoners. It is therefore necessary to prohibit trade in cage beds and in net beds.

(13) In order to protect staff and other people against spitting, prisoners are sometimes made to wear a so-called spit hood. As such a hood covers the mouth and often also the nose, it presents an inherent risk of asphyxiation. If it is combined with restraints, such as handcuffs, there is also a risk of neck injury. Exports of spit hoods should therefore be controlled.

(14) It is generally accepted that batons or truncheons are regular equipment for law enforcement authorities and that shields are regular defensive equipment. Trade in so-called spiked batons is already prohibited as they are more likely to cause severe pain

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or suffering than ordinary batons. In the same vein it is necessary to prohibit trade in spiked shields.

(15) Corporal punishment such as flogging constitutes torture or other cruel, inhuman or degrading punishment. Knouts and other whips having multiple lashes or thongs have been designed for flogging of human beings as a punishment and have no legitimate use. Whips that have a single lash or thong fitted with nails, barbs or similar devices present an inherent risk of causing severe pain or suffering and have no legitimate use either. It is therefore necessary to prohibit trade in such whips. However, whips having a single, plain lash or thong have both legitimate and non-legitimate uses and trade in them should, therefore, not be prohibited.

(16) As regards electric shock weapons and devices of items 2.1 of Annex II and 2.1 of Annex III to Regulation (EC) No 1236/2005, it is appropriate to remove the 10 000 V discharge requirement in an effort to prevent that the prohibition on trade and the export controls would be circumvented by weapons and devices which are capable of administering an electric shock but have a slightly lower no-load voltage.

(17) It is also essential to broaden the scope of the export controls to include, in addition to the portable weapons that are already controlled, fixed or mountable electric discharge weapons covering a wide area and targeting multiple individuals. Such weapons are often presented as so-called non-lethal weapons but present, at the very least, the same risk of causing severe pain or suffering as portable electric discharge weapons.

(18) As regards portable weapons or devices disseminating incapacitating chemical substances, it is appropriate to broaden the scope of the export controls to include weapons and devices disseminating irritating chemical substances which qualify as riot control agents.

(19) As fixed devices for dissemination of irritating chemical substances for use inside a building are being marketed, and indoor use of such substances presents a risk of causing severe pain or suffering not associated with traditional use outdoors, exports of such equipment should be controlled.

(20) Export controls should also be applied to fixed or mountable equipment for the dissemination of incapacitating or irritating substances which covers a wide area, where such equipment is not yet subject to export controls in accordance with Council Common Position 2008/944/CFSP[(3)]. Such equipment is often presented as so-called non-lethal technology but presents at the very least the same risk of causing severe pain or suffering as portable weapons and devices. Although water is not one of the incapacitating or irritating chemical agents, water cannons may be used to disseminate such agents in liquid form and their exports should be controlled.

(21) The export controls concerning oleoresin capsicum (OC) and pelargonic acid vanillylamide (PAVA) should be supplemented by export controls on certain mixtures containing these substances which can be administered as such as incapacitating or irritating agents or used for manufacturing of such agents. It is appropriate to clarify that, where appropriate, references to incapacitating or irritating chemical agents must be construed as including oleoresin capsicum and the relevant mixtures containing it.

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(22) The code of OC from the Combined Nomenclature should be replaced by another code and a number of codes should be added to the lists of goods in Annexes II and III to Regulation (EC) No 1236/2005.

(23) The measures provided for in this Regulation are in accordance with the opinion of the Committee on common rules for exports of products,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 1236/2005 is amended as follows:

(1) Annex II is replaced by the text set out in Annex I to this Regulation.

(2) Annex III is replaced by the text set out in Annex II to this Regulation.

Article 2

This Regulation shall enter into force on the third 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.

Done at Brussels, 16 July 2014.

For the Commission

The President

José Manuel BARROSO

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ANNEX I

ANNEX II

List of goods referred to in Articles 3 and 4

Introductory Note:

The "CN codes" in this Annex refer to codes specified in Part Two of Annex I to Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff[(4)].

Where "ex" precedes the CN code, the goods covered by Regulation (EC) No 1236/2005 constitute only a part of the scope of the CN code and are determined by both the description given in this Annex and the scope of the CN code.

Notes:

1. Items 1.3 and 1.4 in Section 1 concerning goods designed for the execution of human beings do not cover medical-technical goods.

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

NB: In judging whether the controlled 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 controlled component or components as the principal element of the goods being procured.

CN code	Description
	1. **Goods designed for the execution of human beings, as follows:**
ex 4421 90 97 ex 8208 90 00	1.1. Gallows and guillotines
ex 8543 70 90 ex 9401 79 00 ex 9401 80 00 ex 9402 10 00	1.2. Electric chairs for the purpose of execution of human beings
ex 9406 00 38 ex 9406 00 80	1.3. Airtight vaults, made of e.g. steel and glass, designed for the purpose of execution of human beings by the administration of a lethal gas or substance
ex 8413 81 00 ex 9018 90 50 ex 9018 90 60 ex 9018 90 84	1.4. Automatic drug injection systems designed for the purpose of execution of human beings by the administration of a lethal chemical substance