Commission Implementing Regulation (EU) No 1352/2011 of 20 December 2011 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 1352/2011

of 20 December 2011

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,

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 and other cruel, inhuman or degrading treatment or punishment and controls on exports of certain goods that could be used for such purpose. 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 inhumane and degrading treatment or punishment.

(2) In some recent cases medicinal products exported to third countries have been diverted and used for capital punishment, notably by administering a lethal overdose by means of injection. The Union disapproves of capital punishment in all circumstances and works towards its universal abolition. The exporters objected to their involuntary association with such use of the products they developed for medical use.

(3) It is therefore necessary to supplement the list of goods subject to trade restrictions to prevent the use of certain medicinal products for capital punishment and to ensure that all Union exporters of medicinal products are subject to uniform conditions in this regard. The relevant medicinal products were developed for, inter alia, anaesthesia and sedation and their export should therefore not be made subject to a complete prohibition.

(4) It is also necessary to broaden the ban on trade in electric-shock belts to cover similar body-worn devices such as electric shock sleeves and cuffs which have the same impact as electric-shock belts.

(5) It is necessary to prohibit trade in spiked batons which are not admissible for law enforcement. While the spikes are capable of causing significant pain or suffering, spiked batons do not appear more effective for riot control or self-protection than

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ordinary batons and the pain or suffering caused by the spikes is therefore cruel and not strictly necessary for the purpose of riot control or self-protection.

(6) Changes in the numbering of certain parts of the Combined Nomenclature (CN) have occurred after Regulation (EC) No 1236/2005 was adopted and the relevant CN codes should be updated accordingly.

(7) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Common Rules for Exports of Products.

(8) In order to ensure that the measures provided for in this Regulation are effective, this Regulation must enter into force immediately,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II and Annex III to Regulation (EC) No 1236/2005 shall be replaced by the texts in Annex I and Annex II, respectively.

Article 2

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

It shall not apply to products listed in point 4.1 of Annex III for which an export declaration has been lodged prior to its entry into force.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels, 20 December 2011.

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[(2)].

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.

Note: this list does not cover medical-technical goods

CN code	Description
1. Goods designed for the execution of human beings, as follows:	
ex 4421 90 98 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 ex 9402 90 00	1.2. Electric chairs for the purpose of execution of human beings
ex 9406 00 38 ex 9406 00 80	1.3. Air-tight 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
2. Goods designed for restraining human beings, as follows:	
ex 8543 70 90	2.1. Electric-shock devices which are intended to be worn on the body by a restrained individual, such as belts, sleeves and cuffs, designed for restraining human beings by the administration of electric shocks having a no-load voltage exceeding 10 000 V
3. Portable devices allegedly designed for the purpose of riot control, as follows:	

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ex 9304 00 00	3.1. Batons or truncheons made of metal or other material having a shaft with metal spikes

ANNEX II

ANNEX III

List of goods referred to in Article 5

Introductory Note:

The CN codes in this Annex refer to codes specified in Part Two of Annex I to Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.

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.

CN code	Description
1. Goods designed for restraining human beings, as follows:	
ex 9401 61 00 ex 9401 69 00 ex 9401 71 00 ex 9401 79 00 ex 9401 80 00 ex 9402 90 00 ex 9403 20 20 ex 9403 20 80 ex 9403 50 00 ex 9403 70 00 ex 9403 81 00 ex 9403 89 00	1.1. Restraint chairs and shackle boards *Note:* This item does not control restraint chairs designed for disabled persons
ex 7326 90 98 ex 8301 50 00 ex 3926 90 97	1.2. Leg-irons, gang-chains, shackles and individual cuffs or shackle bracelets *Note:* This item does not control "ordinary handcuffs". Ordinary handcuffs are handcuffs which have an overall dimension including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 280 mm when locked and have not been modified to cause physical pain or suffering
ex 7326 90 98 ex 8301 50 00 ex 3926 90 97	1.3. Thumb-cuffs and thumb-screws, including serrated thumb-cuffs