

# FROM WORDS TO DEEDS

MAKING THE EU BAN ON  
THE TRADE IN 'TOOLS OF  
TORTURE' A REALITY

**AMNESTY**  
INTERNATIONAL



**Omega**  
Research Foundation



Amnesty International Publications

First published in 2010 by  
Amnesty International Publications  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW  
United Kingdom  
[www.amnesty.org](http://www.amnesty.org)

© Copyright Amnesty International Publications 2010

Index: EUR 01/004/2010  
Original Language: English  
Printed by Amnesty International, International Secretariat, United Kingdom

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior permission of the publishers.

Amnesty International is a global movement of 2.2 million people in more than 150 countries and territories, who campaign on human rights. Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights instruments. We research, campaign, advocate and mobilize to end abuses of human rights. Amnesty International is independent of any government, political ideology, economic interest or religion. Our work is largely financed by contributions from our membership and donations.

The Omega Research Foundation is a UK-based research organisation, established in 1990 to research the impact on human rights of international transfers of military, security and police (MSP) technologies.

**AMNESTY  
INTERNATIONAL**



# CONTENTS

SUMMARY .....	5
1 LEGAL FRAMEWORK .....	7
1.1 The obligation to control the trade in security equipment .....	7
1.2 Introduction of EC Regulation 1236/2005 .....	8
1.3 International Response to the Regulation .....	8
2 IMPLEMENTATION OF THE REGULATION .....	10
2.1 Member State Licensing decisions .....	10
<i>Table 1: Export licences of concern issued by Member States 2006-2008</i> .....	11
2.2 Imports of Annex II (prohibited) equipment .....	15
2.3 Penalty Legislation .....	16
2.4 Transparency and reporting.....	17
3 EQUIPMENT NOT ADEQUATELY CONTROLLED BY THE REGULATION.....	19
3.1 Equipment that should be added to the prohibited list (Annex II) .....	19
Spiked batons .....	19
Wall and floor restraints.....	20
Leg irons and certain other leg restraints.....	21
Finger-cuffs, thumb-cuffs and thumbscrews .....	22
3.2 Equipment that should be added to the 'controlled' list (Annex III) .....	23
Handcuffs.....	23
Batons and other hand-held impact devices.....	24
3.3 Technical definitions and exclusions.....	24
Leg cuffs exported as components.....	25
High-voltage electric-shock stun weapons operating below 10,000 volts .....	26
Stun belts, stun cuffs and other high-voltage electric-shock stun restraint devices .....	26
Specially designed components and accessories for controlled and prohibited equipment .....	27

4	OTHER CONCERNS .....	28
4.1	Exclusively list-based controls .....	28
4.2	National measures .....	29
4.3	Brokering controls.....	29
4.4	Transfers into and between Member States.....	30
4.5	Equipment in transit through the EU .....	31
4.6	Technical assistance and training .....	32
4.7	Promulgation, outreach and information gathering.....	32
	<i>Table 2: Traders in Regulation-controlled items in Belgium, Finland and Italy operating between 2006 and 2010 .....</i>	<i>33</i>
4.8	Enforcement .....	35
	Preventative enforcement .....	35
	Physical inspection of exported, imported and in-transit items.....	36
	Effective data handling and exchange .....	38
	Investigation and prosecution.....	38
	SUMMARY OF RECOMMENDATIONS .....	40
	To Member States.....	40
	To the European Commission and the Committee on Common Rules for Exports of Products .....	42
	APPENDIX ONE: NATIONAL PENALTY LEGISLATION INTRODUCED BY MEMBER STATES .....	46
	<i>Table 3: Member States that introduced penalty legislation before the 29<sup>th</sup> August 2006 deadline .....</i>	<i>46</i>
	<i>Table 4: Penalty legislation introduced after the 29<sup>th</sup> August 2006 deadline.....</i>	<i>47</i>
	<i>Table 5: Member State implementation through recourse to existing laws.....</i>	<i>48</i>
	ENDNOTES .....	50

# SUMMARY

In 2006 the European Union (EU) introduced the world's first multilateral trade controls to prohibit the international trade in equipment that has no other practical purpose than for capital punishment, torture and other ill-treatment; and to control the trade in a range of policing and security equipment frequently misused for such ill-treatment. Council Regulation 1236/2005<sup>1</sup> fills a major gap in human-rights-based export controls. It introduced unprecedented, binding trade controls on a range of equipment which is often used in serious human rights violations, but which has not usually been included on Member States' military, dual-use or strategic export control lists.

This landmark piece of legislation has been widely welcomed by human rights bodies in the United Nations and elsewhere, and has influenced proposed new trade controls in at least one other major global exporter of such equipment, the USA. Three years after its introduction, however, Amnesty International and the Omega Research Foundation have found that:

- EC Regulation 1236/2005 remains unimplemented or only partly implemented in several Member States;
- traders in some Member States have continued to offer for sale equipment which is explicitly prohibited for import and export to and from the European Union on the grounds that it has no other practical purpose than for torture or other ill-treatment;
- other Member States have explicitly authorised the export of security equipment controlled under the Regulation to destinations where such equipment is widely used in torture and other ill-treatment, raising serious concerns about the adequate assessment of human rights standards in Member States' export licensing decisions;
- several loopholes in the Regulation continue to allow traders in Member States to undertake unregulated trading activities in a range of equipment and services that have been used for torture and other ill-treatment by military, security and law enforcement personnel around the world. These include spiked batons; metal 'finger-cuffs'; and electric-shock stun 'sleeves' and 'cuffs' delivering 50,000-volt shocks to prisoners or detainees.

This report, written jointly by Amnesty International and the Omega Research Foundation (Omega), seeks to facilitate and inform an EU-led process currently assessing the implementation and effectiveness of EC Regulation 1236/2005. The report is technical in nature, and primarily designed for use by relevant officials of Member States and the European Commission. It updates a previous Amnesty International/Omega Research Foundation report published in February 2007 (*European Union: Stopping the Trade in Tools of Torture*).<sup>2</sup>

## RESEARCH METHODOLOGY

Research for this report was carried out by the Omega Research Foundation (Omega) and Amnesty International. The research included direct surveying of companies engaged in the security equipment trade, and both correspondence and in-person meetings with European Commission and Member State officials responsible for the implementation and review of EC Regulation 1236/2005. The report also draws upon the detailed documentation of torture and cruel, inhuman and degrading treatment undertaken by Amnesty International's researchers around the world over a number of years.

The dataset of information about companies involved in the security equipment trade on which this report draws has been maintained and updated by Omega, which has researched the global police and security equipment market since 1990. Omega carries out market surveying on a continuous basis and gathers current as well as historical market, product and trade data from a wide range of open-source and commercial sources. These include company-produced information from websites and product brochures; industry sector publications; government publications; company and financial information from national company registries; government- and commercially-produced trade statistics; media organisations; and

credible, reliable reports and publications by non-governmental organisations (NGOs) and international governmental organisations (IGOs). The data in this report concerns entities trading from the European Union since 2006 and is a subset of data held by Omega on the global trade in these products and services. Although this report is principally concerned with the use and trade of security equipment for law enforcement and detention, a common feature of this market sector is that many companies supply equipment to the police/security/detention market, and also a sub-set of their product range for private security personnel or personal protection for private citizens.

# 1 LEGAL FRAMEWORK

## 1.1 THE OBLIGATION TO CONTROL THE TRADE IN SECURITY EQUIPMENT

The prohibition on torture and other cruel, inhuman or degrading treatment or punishment (other ill-treatment) is absolute.<sup>3</sup> It applies in all circumstances and, as part of international customary law, to all states.<sup>4</sup> Article 5 of the Universal Declaration of Human Rights states that: "*No one shall be subject to torture or other cruel, inhuman or degrading treatment or punishment*".<sup>5</sup> This is reiterated in Article 7 of the International Covenant on Civil and Political Rights (ICCPR),<sup>6</sup> Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms,<sup>7</sup> and Article 4 of the Charter of Fundamental Rights of the European Union. International law imposes specific obligations on states to prevent torture and other ill-treatment, to investigate its occurrences, to bring to justice the perpetrators and to provide reparations to the victims. These obligations are elaborated in a range of other instruments, including the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>8</sup>

Despite such obligations, torture is still variously perpetrated in countries in all regions of the world. UN independent experts, UN bodies, and non-governmental human rights organizations have documented the use of different types of equipment to commit such torture and other ill-treatment. Some of this equipment, offered for sale to law enforcement agencies, has no practical use other than for capital punishment or to inflict torture or other ill-treatment. Other kinds of equipment do have legitimate uses in appropriate circumstances for law enforcement, but in practice have been found to be persistently misused by some law enforcement officials for torture or other ill-treatment. In 2004, the then UN Special Rapporteur on Torture argued in his report to the UN Commission on Human Rights that controlling the trade of such equipment forms part of every state's obligations under the UN Convention Against Torture:

*...allegations of torture ... received from all regions of the world have involved instruments such as restraints (e.g. shackles, chains, bar fetters, leg irons, thumb-cuffs and shackle boards), electro-shock stun weapons (e.g. batons; stun guns, shields and belts; and tasers), kinetic impact devices (e.g. lathis, truncheons and sjamboks), and chemical control substances (e.g. tear gas and pepper spray). While some of the cases have involved the use of equipment which is inherently cruel, inhuman or degrading, and would per se breach the prohibition of torture, the vast majority have involved the misuse of those instruments, legitimate in appropriate circumstances, to inflict torture or other forms of ill-treatment.*<sup>9</sup>

He noted that:

*Despite an international legal framework in place to prohibit and prevent torture and ill-treatment, the use (or misuse) of these instruments continues to be facilitated by a lack of implementation of these international standards. Moreover, it is facilitated by a lack of specific measures to control the trade and proliferation of such instruments....the obligation to prevent torture in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment necessarily includes the enactment of measures to stop the trade in instruments that can easily be used to inflict torture and ill-treatment.*<sup>10</sup>

The United Nations General Assembly, in its 2009 resolution on torture and other cruel, inhuman or degrading treatment or punishment, also called upon all States:

*to take appropriate effective legislative, administrative, judicial and other measures to prevent and prohibit the production, trade, export and use of equipment that is specifically designed to inflict torture or other cruel, inhuman or degrading treatment or punishment.*<sup>11</sup>

This call, with only minor textual changes, has been made regularly by the UN General Assembly and the former UN Commission on Human Rights since 2001. The phrase “specifically designed”, however, may permit the producers of such equipment to evade controls, since they are likely to deny that they intended their products to be used for torture or other ill-treatment. The EU has thus addressed this problem in framing EC Regulation 1236/2005 to cover both equipment which has “no other practical use” than for torture or other ill-treatment, irrespective of its intended use; and policing and security equipment which “could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment”, and which has in practice been widely used for such purposes.

## 1.2 INTRODUCTION OF EC REGULATION 1236/2005

In response to international concern over the use of security equipment for torture raised by governments and civil society organizations including Amnesty International and Omega, on 3 October 2001 the European Parliament adopted a Resolution urging the European Commission to “act swiftly” to develop an EU-wide regional instrument to regulate trade in this area.<sup>12</sup> In December 2002, the European Commission developed a Proposal for a Council Regulation (COM (2002) 770) to control, and in some cases prohibit, equipment that has been used for torture and other cruel, inhuman or degrading treatment or punishment.<sup>13</sup>

Subsequent consultations and negotiations amongst Member States took over two years, and the final text was agreed in July 2005.<sup>14</sup> On 30 July 2006, Council Regulation 1236/2005 came into force.

### THE REGULATION:

- bans the import and export of equipment which “have no practical use other than for the purpose of capital punishment or for the purpose of torture and other cruel, inhuman or degrading treatment or punishment” – (**Annex II items**) – “irrespective of the origin of such equipment”; and technical assistance relating to such equipment<sup>15</sup>
- introduces EU-wide export controls on a limited range of equipment that “could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment” (**Annex III items**).<sup>16</sup>

As part of its work to help prevent torture and ill-treatment outside its own borders, the EU has also adopted guidelines which include urging third countries to prevent the use, production and trade of equipment which is designed to inflict torture or other cruel, inhuman or degrading treatment or punishment, and to prevent the misuse of any other equipment for these purposes.<sup>17</sup>

## 1.3 INTERNATIONAL RESPONSE TO THE REGULATION

The introduction of the Regulation in 2006 was applauded by human rights experts and organisations including Amnesty International and Omega. The UN Special Rapporteur on Torture welcomed it as a milestone in the fight against torture, and as a model that could be followed by countries in other regions.<sup>18</sup>

Trade control officials from non-Member States have shown interest in the introduction of comparable measures to the Regulation in their countries.<sup>19</sup> Significantly, in August 2009, the US Bureau of Industry and Security proposed amendments to US export controls that mirrored and in some cases went beyond some of those contained in the Regulation.<sup>20</sup>

However, both the UN Special Rapporteur on Torture and Amnesty International have highlighted weaknesses in the Regulation's text.<sup>21</sup> In 2007 Amnesty International also expressed public concern



about the inadequate or non-existent implementation of the Regulation in some European countries.<sup>22</sup>

The issue of implementation was also raised by the General Secretariat of the Council of the European Union (ECGS) in its 2008 report to the Council on EU actions in furtherance of commitments to combat torture and other ill-treatment.<sup>23</sup> The ECGS noted that “significant progress” had been achieved in fulfilling EU anti-torture obligations through the introduction of the Regulation, but also noted that “no systematic assessment of its implementation is yet available.” Particularly in the light of the potential for the Regulation to “serve as a model for a global regulation on this theme”, the ECGS highlighted the need for the EU to undertake an assessment of Member States’ implementation of the Regulation.<sup>24</sup>

## 2 IMPLEMENTATION OF THE REGULATION

The Regulation, which came into effect on 30 July 2006, is directly binding on all 27 Member States, and has the status of national law in all those States. However, its practical effectiveness depends upon the willingness of Member States and the European Commission to adequately implement, monitor and enforce it.

### 2.1 MEMBER STATE LICENSING DECISIONS

Article 6 of the Regulation obliges Member States to regulate the export of controlled items, and to deny authorisations for exports of such items “when there are reasonable grounds to believe that goods listed in Annex III might be used for torture” or other ill-treatment. Under Article 6.1:

*“[d]ecisions on applications for authorisation for the export of goods listed in Annex III shall be taken by the competent authority on a case by case basis, taking into account all relevant considerations, including in particular, whether an application for authorisation of an essentially identical export has been dismissed by another Member State in the preceding three years.”*

Full information about licences granted and denied under the Regulation across the EU is not publicly available (see Section 2.4 below). However, six states - Czech Republic, Germany, Latvia, Netherlands, Spain and the UK – have provided Omega and Amnesty International with licensing information. Some of this data raises serious concerns that some Member States' export-licensing authorities are not consistently assessing the risk that items exported under the Regulation may be misused for torture or other ill-treatment, as required by Article 6 of the Regulation. Certain Member States have granted export licences for such items to a number of countries where the same items appear to have been used for torture and other cruel, inhuman and degrading treatment, according to contemporary reports by Amnesty International and other human rights organisations and rapporteurs. These concerns cannot be confirmed or allayed without further information regarding the intended end-user of the items in each case: information which is also not systematically available.<sup>25</sup> In some cases, Member States may have issued export licences for items to destinations where other Member States have refused licences, a problem known as ‘undercutting’, which potentially undermines the integrity and coherence of the EU's export controls. For example, during 2008 the Czech Republic issued export licences covering “electric shock devices, chemical substance sprays, leg irons” to countries including the USA; while in 2007 the UK refused a licence during 2007 for export to the USA of equipment rated as “HRA III”, a category which also covers electric-shock devices, chemical substance sprays and leg restraints.<sup>26</sup>

TABLE 1: EXPORT LICENCES OF CONCERN ISSUED BY MEMBER STATES 2006-2008<sup>27</sup>

Exporting Country	Year	No. of authorisations	Destination(s)	Equipment	Contemporary reports of torture or other cruel, inhuman or degrading treatment or punishment in destination countries
Czech Republic	2006	8	Bulgaria, Romania, Mexico, USA, Mongolia, Georgia	Electric-shock devices, combined shackles, chemical substance sprays	<p>Georgia: "methods of torture [by law enforcement officials] included...<b>the use of electric shocks</b>"</p> <p>- <i>Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, to the 62<sup>nd</sup> Commission on Human Right, 23 December 2005. Emphasis added.</i></p> <p>Mongolia: "Torture and ill-treatment persisted and beatings were systematic in police stations and pre-trial detention facilities."</p> <p>- <i>Amnesty International Report 2006</i></p> <p>Mongolia: "torture and ill-treatment by law enforcement officials persists, particularly in police stations, pre-trial detention facilities, and in the strict and special prison regimes, particularly on death row. The methods of torture described in the vast majority of cases that the Special Rapporteur came across involved beatings with fists and truncheons to extract confessions....other methods cited included: "flying to space" (where a person is made to stand on a stool, which is kicked away from underneath), needles pushed under fingernails, <b>electroshock</b> (i.e. wires attached to a ceiling light bulb socket and connected to a puddle of water), burning with cigarettes, <b>prolonged periods of being handcuffed and shackled</b> (in one case three years)"</p> <p>- <i>Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, on his Mission to Mongolia, 6-9 June 2005. Emphasis added.</i></p>

Czech Republic	2007	10	Israel, Croatia, Senegal, USA, Pakistan, Venezuela, Moldova	Electric-shock devices, chemical substance sprays	<p>Pakistan: “Scores of people suspected of links to terrorist groups, Baloch or Sindhi activists, and journalists were arbitrarily detained and subjected to enforced disappearance. State agents denied knowledge of whereabouts to relatives and when questioned in court during habeas corpus hearings. Those released reported being tortured and ill-treated”.</p> <p>- <i>Amnesty International Report 2007.</i></p> <p>These cases included that of Mehruddin Mari, a correspondent for the Sindhi-language newspaper the Daily Kawdish, who was beaten and <b>subjected to electric shocks</b> by military officials in order to force him to confess to links with the Baloch nationalist movement during his four-month detention, July-October 2006.</p> <p>- <i>see Amnesty International, Pakistan: Fear for Safety (Index: ASA 33/008/2007). Emphasis added.</i></p> <p>Moldova: “About a third of persons whom the delegation interviewed who had been recently detained by the police made precise and credible allegations of physical ill-treatment....Allegations of ill-treatment received by the delegation...in a limited number of cases <b>included electric shocks</b>, the placing of a gas mask over the [victim’s] head and beating on the soles of the feet.”</p> <p>- <i>Council of Europe, Committee for the Prevention of Torture visit to Moldova, September 2007: Preliminary Observations (CPT/Inf (2007) 43)</i></p> <p>Senegal: According to the Committee to Protect Journalists (CPJ): “Walf TV reporter Ousmane Mangane told CPJ that riot police used <b>[electric-shock stun] Tasers</b> on him as he was attempting to interview an opposition member of parliament, Mously Diakhaté, on live television.”</p> <p>- <i>Committee for the Protection of Journalists, Press Release, 31 March 2008. Emphasis added.</i></p>
----------------	------	----	---	---	---

Czech Republic	2008	1	Cameroon	Electric-shock devices, chemical substance sprays	<p>Cameroon: “[During 2005] [T]he systematic torture continued of suspects arrested by the police and gendarmerie.</p> <p>- <i>Amnesty International Annual Report 2006</i></p> <p>The Medical Foundation documented the cases of 60 Cameroonian victims of torture, of whom <b>30% had experienced electric-shock torture</b>. They included: “[Ms. A, arrested in 2000 at a political meeting, who] was whipped with electric cable, <b>shocked with electric batons</b> and had her head pounded against the walls....Mr N [arrested for political activities in 1999] was beaten while suspended by his ankles from a hook in the ceiling. He also suffered <b>electric shocks applied to his tongue and genitals</b>. He was anally raped, repeatedly.”</p> <p>- <i>Medical Foundation for the Care of Victims of Torture, ‘Every Morning, Just Like Coffee: Torture in Cameroon’ (26 June 2002). Emphasis added.</i></p>
Czech Republic	2008	1	Pakistan	Electric-shock devices	Pakistan: see above
Germany	July 2006 – July 2007	1	Cameroon	pepper spray	<p>Cameroon: During 2007 Amnesty International reported that instances of torture by security forces continued to be reported.</p> <p>- <i>Amnesty International Annual Report 2008</i></p>
Germany	July 2006 – July 2008	5	India	PAVA <sup>28</sup>	<p>India: In July 2008 the Asian Centre for Human Rights reported that “[t]orture is used routinely in police detention. While torture is applied less systematically by prison officials, their complicity with prisoner gang violence and ill treatment implicit in appalling prison conditions are serious violations.” Documented cases covered a range of techniques, including an instance in which a police detainee alleged that “In addition to beatings...the officer in charge of the police station, <b>sprayed acid in his rectum</b> during the interrogation.”</p> <p>- <i>Asian Centre for Human Rights, Torture in India 2008: A State of Denial. Emphasis added.</i></p>

Germany	July 2006 – July 2008	5	China	PAVA	<p>China: Amnesty International reported that during 2006 “torture in detention remained widespread” in China. This included an instance in which an arrested leader of an unofficial Protestant group was beaten and subjected to “<b>forced injection of hot pepper...</b>into the nose”</p> <p>- <i>Amnesty International Annual report 2007. Emphasis added.</i></p>
Germany	July 2006 – July 2007	1	United Arab Emirates	‘fussketten’ [footchains]	<p>UAE: A Guantanamo Bay detainee alleged that he was held incommunicado for around eight months in or near Dubai from January 2004 onwards, and that he was subjected to torture and ill-treatment including "being kept naked, <b>sometimes shackled</b>, for 22 consecutive days”</p> <p>- <i>Amnesty International, Who are the Guantanamo detainees: Fact Sheet#25. Emphasis added.</i></p>

Without more detailed information about prospective end-users of this equipment, it is difficult to be certain in all cases that there are not reasonable grounds to believe that such exports might be used in torture or other ill-treatment – which is the sole criterion permitted to determine authorisations for exports under Article 6.2 of the Regulation. Furthermore, we have serious concerns about the licensing of exports of shackles and leg cuffs, whose use as instruments of restraint under the UN Minimum Rules on the Treatment of Prisoners is permitted only in very limited circumstances (see Section 3 below).<sup>29</sup>

Although there are certain transfers from the Czech Republic outlined above that raise real concerns regarding the adequacy of pre-export risk assessment – and require further information to confirm whether they have breached the Regulation - it is important to note that the Czech Republic has also utilised its powers under the Regulation to refuse authorisation of electric-shock devices to Azerbaijan and Iran due to the risk of their use for torture.<sup>30</sup>

We urge all Member States to fulfil their obligations under Article 6 of the Regulation to refuse the authorisation of any export of an item under Annex III where there are “reasonable grounds” to believe that such equipment might be used for torture or other ill-treatment.<sup>31</sup>

In the process of making such export decisions as required under Article 6.2 of the Regulation, the competent authority must take into account available international court judgements, findings of the competent bodies of the UN, the Council of Europe and the EU, and reports of the Council of Europe’s Committee for the Prevention of Torture, and of the UN Special Rapporteur on Torture. We recommend that credible reports or other information prepared by civil society organisations are also taken into account, as permitted under Article 6.2.

To prevent ‘undercutting’ of Member States’ licensing decisions by other Member States, and to ensure the consistency of the Regulation’s application throughout the EU, we recommend that the Commission and the Committee ensure that an established procedure is in place to share information between Member States and the European Commission regarding measures taken to implement the Regulation; and details of export authorisations granted or refused, either through the denial notification mechanism already established for military export denials,<sup>32</sup> or through other effective procedures; as mandated in Article 13.2 of the Regulation. Information provided by Member States should at a minimum include the type of decision taken for each licence application; the grounds for the decision or a summary thereof; the items included in the application; the names of the consignees; and, if they are not the same, the end-users of the items concerned.

## 2.2 IMPORTS OF ANNEX II (PROHIBITED) EQUIPMENT

Article 4 of the Regulation prohibits the import or export of any item, listed in Annex II, which has no practical use other than for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment. Annex II lists, among other items:

*Electric-shock stun belts designed for restraining human beings by the administration of electric shocks having a no-load voltage exceeding 10 000 V*

Unlike other electric-shock stun devices, stun belts are intended to be attached to prisoners’ bodies and worn, sometimes for hours at a time, with the constant threat that they can be remotely activated at any time. The belt can be activated by a remote control device; the police or prison officer using the device can be as far as 100 metres away. On activation, a typical stun belt delivers a shock of 50,000 volts.<sup>33</sup> Although specifications vary according to the particular model, such devices typically generate a high-voltage ‘pulse current’ which enters the prisoner’s body at the site of the electrodes, usually near the kidneys, and passes through the body. The shock causes incapacitation in the first few seconds and severe pain which can last up to eight seconds. The shock cannot be stopped once activated. Amnesty International has argued that “the belt relies on the prisoner’s constant fear of severe pain being inflicted at any time while held in a situation of powerlessness.”<sup>34</sup> Such belts have been used in the USA and South Africa.<sup>35</sup> Amnesty International and Omega believe that the use of such stun belts is inherently cruel, inhuman or degrading, and since 2001 have called for their manufacture, transfer and use to be banned.

Amnesty International and Omega are thus greatly concerned by information provided by the Hungarian government to the Council of Europe’s Committee for the Prevention of Torture (CPT) in 2005 that 50,000V stun belts were to be introduced in all Hungarian prisons and police establishments by the end of 2005, alongside stun batons.<sup>36</sup>

The Hungarian Government stated in 2006 that the stun batons referred to in the CPT’s report had not been used, but

have provided no further information about the use of the stun belts.<sup>37</sup>

Despite attempts by Amnesty International and Omega to contact relevant officials from the trade and home affairs departments, the Hungarian government has not provided the organisations with any information as to whether the stun belts are still in use; whether any technical assistance, training or any technical manuals have been imported; and if so, when such transfers occurred.<sup>38</sup>

Since Omega and Amnesty International are not aware of any manufacturers of electric-shock stun belts within the European Union, it is likely that they would have to be imported into Hungary. Although Article 4 of the Regulation prohibits the import of electric-shock stun belts into the EU, if completed by the end of 2005 Hungary's imports would have just pre-dated the Regulation's entry into force. Nonetheless the introduction into an Member State's judicial system of a security device explicitly classified in European law as one which "[has] no practical use other than for the purpose of... torture and other cruel, inhuman or degrading treatment or punishment,"<sup>39</sup> and its possible continued deployment, raise serious questions about the commitment of Hungary to uphold the Regulation, as well as its broader obligations under international law to prevent torture and ill-treatment within its territory.

We note that any import by the Hungarian government, or any Hungarian company or individual, of technical assistance, training, technical manuals or further stun belts since July 2006 would constitute a breach of the Regulation.<sup>40</sup>

We recommend that the Commission (and if appropriate, the Committee) should establish whether and when any electric-shock stun belts or related parts, technical assistance or training have been transferred to Hungary. The European Commission (and if appropriate, the Committee), should as a matter of urgency investigate whether Hungary has breached the Regulation or other European anti-torture regulations with regard to the import or use of stun belts, or of training, assistance or components for such belts.

The Commission should establish the location of these belts, and determine whether they are being employed by Hungarian law enforcement or correctional officials. If such practices continue, they should be terminated immediately and all electric-shock stun belts removed from prisons and other detention facilities.

## 2.3 PENALTY LEGISLATION

An essential part of implementing the Regulation is for all Member States to introduce rules imposing penalties on violators of the Regulation (explicitly required by Article 17 of the Regulation),<sup>41</sup> and for those rules to be adequately enforced.

Article 17 also requires all Member States to "notify the Commission of those rules by 29<sup>th</sup> August 2006" and "notify it without delay of any subsequent amendment affecting them."<sup>42</sup> Appendix One of this report provides details of the national penalties for breaches of the Regulation that Amnesty International and Omega have been able to obtain from Member States following written requests. Twelve Member States introduced penalty legislation prior to the 29<sup>th</sup> August 2006 deadline, as required by the Regulation. Eight Member States introduced legislation after this date, between October 2006 and February 2008, while five others have stated that existing legislation already provides for penalties for breaches of the Regulation. Requests for information to the governments of Portugal and Romania received no reply; nor do these two States appear to have provided this information to the European Commission, as required under Article 17.<sup>43</sup>

We urge all Member States to inform the European Commission of the relevant penalties they have introduced for breaches of EC Regulation 1236/2005, as they are obliged to do under Article 17 of the Regulation. If they have not introduced such penalties to date, they should provide the European Commission with details of how and when they will fulfil their Article 17 obligations.

We recommend that in accordance with Article 16, the Committee on Common Rules for Exports of Products, with the assistance of the European Commission, should analyse the penalty regimes introduced by Member States in meeting their obligations under the Regulation. They should assess whether such regimes are "effective, proportionate and dissuasive", in accordance with Article 17 of the Regulation.

Where such penalty rules have not been introduced or are insufficient, the Committee and the Commission should provide guidance and assistance to strengthen them.



## 2.4 TRANSPARENCY AND REPORTING

In order to judge whether the Regulation is being adequately and consistently implemented across the European Union, both the European Commission and the public must be given clear information about the applications and licences granted by Member States for international transfers of the equipment and technical assistance covered by the Regulation. Article 13 of the Regulation requires that:

*Member States, if possible in co-operation with the Commission, shall make a public, annual activity report, providing information on the number of applications received, on the goods and countries concerned by these applications, and on the decisions they have taken on these applications.<sup>44</sup>*

To date only the following **seven** States have produced one or more public annual activity report: Bulgaria,<sup>45</sup> Czech Republic,<sup>46</sup> Germany,<sup>47</sup> Lithuania,<sup>48</sup> Slovenia,<sup>49</sup> Spain<sup>50</sup> and the United Kingdom.<sup>51</sup>

The following 20 States do not appear to have produced public annual activity reports at the time of writing: Austria, Belgium, Cyprus, Denmark, Estonia,<sup>52</sup> Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, the Slovak Republic and Sweden. Of these, four Member States – Belgium, the Czech Republic, Cyprus, France, and Luxembourg – informed Amnesty International or Omega definitively that they have not produced public annual activity reports.

Of those 20 States:

- Latvia<sup>53</sup> and the Netherlands<sup>54</sup> have nonetheless provided Omega and Amnesty International with details of licences they have approved;
- Belgium, Cyprus, Denmark, Finland, Greece, Ireland, Italy, Luxembourg, Malta, Poland and Sweden informed Amnesty International or Omega that they had either not received any licence applications, or had not issued any licences.

The government of Luxembourg, at least, appears not to consider that it is bound by individual state reporting obligations, despite these being clearly stated in the Regulation, informing Omega that:

*It is our understanding of art. 13, 3 of the regulation, that the "public, annual activity report" is a common one established by Member States. So far, there has not been (to our knowledge) an initiative from the Commission to set up such a report with the MS [Member States]. Likewise, we are not aware of such a report published by a MS.<sup>55</sup>*

In addition, the information published or supplied on request by certain Member States is inadequate in a number of important respects, making it very difficult for parliaments and the public to exercise a reasonable level of scrutiny of the control of this trade:

- To our knowledge the public reports of only three Member States (Czech Republic, Germany and the UK) distinguished between particular kinds of equipment in each licence they granted under the Regulation.
- Spain's public reports list authorisations for a general category of 'other material' which includes some equipment covered by the Regulation, but also a number of other types of equipment not included in the Regulation, such as armoured vehicles and telescopic sights. This aggregate category makes it impossible to ascertain what type of equipment was authorised for export to particular countries.
- Only Spain and Germany provided information about the end-users of licensed equipment (although this was not done systematically in Germany's case).

We urge all Member States which have not done so to compile public annual activity reports in accordance with their Article 13(3) obligations. They should send a copy of their reports to the European Commission and make them publicly available. These reports should at a minimum include: the number of applications received, the items involved and countries of destination for each application, as well as the decisions made

on each of these applications. To ensure more effective public and parliamentary oversight and accountability, Member States should also provide details of the end users of the items concerned.

We recommend that all Member States' annual activity reports, compiled in accordance with their Article 13(3) obligations, should be updated and form part of a formal Regulation review process undertaken by the Committee on Common Rules for Exports of Products, as empowered by Article 15 and 16 of the Regulation.

To facilitate the compilation and completion of annual activity reports by all Member States and to ensure their consistency, we recommend that the European Commission develops a model framework report.

We also recommend that the Commission take a more proactive role in the reporting process: for example, by writing to all Member States to remind them of their obligations to publish annual activity reports; and offering advice and assistance in the production of their reports. The Commission should also consider publishing all annual reports on a dedicated website so that parliaments and the public can exercise a reasonable degree of oversight.

## 3 EQUIPMENT NOT ADEQUATELY CONTROLLED BY THE REGULATION

The Regulation has introduced unprecedented, binding trade controls on a range of equipment not commonly included on Member States' military, dual-use or strategic export control lists. Paragraph 23 of the Regulation states that "[i]n order to take into account new data and technological developments, the list of goods covered by this Regulation should be kept under review and provision should be made for a specific procedure to amend these lists." A survey of the international market for policing and security equipment, conducted by Amnesty International and Omega, has illustrated a number of gaps in the lists of items requiring control by Member States under the Regulation. Since no changes have been made to the list since 2006, it is unclear how effectively this undertaking has been fulfilled to date.

### 3.1 EQUIPMENT THAT SHOULD BE ADDED TO THE PROHIBITED LIST (ANNEX II)

Amnesty International and Omega recommend that the list of items contained in Annex II whose import and export is prohibited by the Regulation should be expanded to include a number of other types of security and policing equipment which have no practical use by law enforcement officials other than for torture and other ill-treatment.

The use of such equipment, outlined below, also breaches UN standards on the use of force by law enforcement officials, which require that force is only used exceptionally, when strictly necessary, and to the extent required for the achievement of a legitimate aim, such as the prevention of crime or effecting the lawful arrests of individuals; and that when the use of force is unavoidable, law enforcement officials shall minimize damage and injury.<sup>56</sup>

Certain instruments of restraint are also regulated by international standards including the UN Standards Minimum Rules for the Treatment of Prisoners and the European Prison Rules. These standards prohibit the use of certain instruments such as "chains" and "irons", some of which are nonetheless not currently prohibited under the Regulation.

Amnesty International and Omega believe that the trade and use of the equipment listed in this section should be banned in all circumstances, as the use of this equipment either inflicts unnecessary pain, or is inherently degrading and amounts to torture or other ill-treatment.

#### SPIKED BATONS

Specially manufactured spiked batons – sometimes referred to as 'sting sticks'<sup>57</sup> – are mass-produced and exported by a number of East Asian policing equipment manufacturers.<sup>58</sup> Such weapons are metal batons with pointed ends and metal spikes running down the shaft. In the hands of law enforcement officials, these weapons have no practical use other than to inflict torture or other ill-treatment.



*Left: Sting stick purchased from a Chinese supplier for the Dispatches documentary 'After School Arms Club' broadcast on Channel 4 TV (UK), April 2006. (© Robin Ballantyne/Omega Research Foundation)*

*Right: Spiked baton on sale at China Public Security Exhibition, Shenzhen, PRC, November 2007 (© Robin Ballantyne/Omega Research Foundation)*

Spiked batons have been reportedly used by law enforcement officials in both China and Nepal.<sup>59</sup> In June 2003, the Asian Human Rights Commission (AHRC) documented the case of Ramesh Sharma, who lost his right eye after being subjected to an indiscriminate baton charge by the Nepali police during a peaceful torch rally on 11 May 2003 in Ratnapark, Kathmandu. The AHRC reported that Mr Sharma sustained severe injuries to both his eyes because the police had allegedly hit him several times with "iron-spiked sticks" and specifically targeted his eyes.<sup>60</sup> Spiked batons are also reportedly internationally traded elsewhere: they have been exported from China to Cambodia and Thailand, according to a November 2007 interview with a Chinese police equipment manufacturer.<sup>61</sup>

Omega and Amnesty International have not identified any EU companies currently producing or trading in this equipment. Nonetheless at present the Regulation does not prevent an EU company from doing so. One Member State, the UK, has already taken action to prohibit these devices from being exported, traded or brokered by any UK person since April 2008.<sup>62</sup> The US government has also recently proposed to classify spiked batons as 'specially designed implements of torture' and ban their export from the USA.<sup>63</sup> The UK government has also proposed that the Regulation be amended to include hand-held spiked batons in the Annex II list of prohibited equipment.<sup>64</sup>

We recommend that spiked batons are added to Annex II of the Regulation, and that their import and export be prohibited to prevent their international trade from contributing to torture and other ill-treatment.

#### WALL AND FLOOR RESTRAINTS

Some restraints, specifically designed and intended for use on human beings, are designed to be fixed integrally to the wall or floor of a prison or detention facility. They have been developed and are traded in various forms, ranging from an isolated cuff or ring (for one ankle or wrist), to elaborate four-point floor and wall restraints (securing a detainee's ankles and wrists).

The Council of Europe's Committee for the Prevention of Torture (CPT) has repeatedly stated that "[c]haining inmates to [...] fixed objects is totally unacceptable in any circumstances and could be considered as inhuman and degrading treatment."<sup>65</sup> The CPT has recorded - and strongly criticised - the use of such devices in a number of countries, including the Czech Republic<sup>66</sup> and the Dutch territory of Aruba.<sup>67</sup> In the Czech Republic, for example, the CPT received complaints about the cuffing of detained persons to metal rings in uncomfortable positions in certain police stations, and in particular in Jablonec, where they observed five metal rings attached to the wall in the custody area, some 50 cm from the floor.<sup>68</sup>

Amnesty International has also documented cases in a number of countries where prisoners have been handcuffed or shackled to walls or other fixed structures for long periods of time, or where such instruments have been used to facilitate torture or other ill-treatment. For example, Amnesty International documented the enforced disappearance of two Yemeni men, Muhammad Bashmilah and Salah Qaru, whilst in US custody, and their incommunicado detention for more than 18 months before being returned to Yemen in May 2005. During their enforced disappearance they described being permanently shackled to a ring fixed in the floor.<sup>69</sup>

Although fixed-position restraints may be improvised, bespoke fixed restraints are also manufactured and traded. Companies in Poland, the Russian Federation, and the USA have manufactured or advertised specifically designed wall-cuffs consisting of a single cuff and an anchor bolt to be attached to a wall, as illustrated below.<sup>70</sup> Such bespoke devices for use on prisoners can be clearly distinguished from other forms of restraint designed for medical or other legitimate use.

*Below: Single fixed 'wall-cuff' purchased from the Polish company Eltraf Bis, April 2006. (© Robin Ballantyne/Omega Research Foundation)*



We recommend that wall or floor restraints specifically designed for restraining humans should be added to Annex II of the Regulation and their import and export prohibited, to prevent their international trade from contributing to torture and other ill-treatment. Dual-use restraints that are designed and marketed for other use, such as medical use, would not come under this provision. However, specific exports of such dual-use equipment could be prohibited under the proposed “torture end-use catch all” clause (see section 4.1 of this report) if Member States deemed there was a risk of such items being misused by their proposed or likely end-user for torture or ill-treatment.

## LEG IRONS AND CERTAIN OTHER LEG RESTRAINTS

Rule 33 of the UN Standard Minimum Rules for the Treatment of Prisoners states that “[i]nstruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints.”<sup>71</sup> Article 68.1 of the European Prison Rules reiterates this prohibition.<sup>72</sup>

More than 50 years since the UN Standard Minimum Rules were adopted, the use in detention and law enforcement of a range of metal leg restraints, including fixed-bar leg irons, leg cuffs and gang chains, remains widespread. In China, detainees have been forced to do heavy physical work in “fettters”.<sup>73</sup> The use of leg restraints on prisoners while in hospital has also been reported by Amnesty International in Zimbabwe and the USA,<sup>74</sup> and specifically on pregnant women during childbirth in the USA.<sup>75</sup>

Journalists and human rights organisations have also highlighted how the USA has used leg irons and leg cuffs in abuses overseas forming part of its “War on Terror”. Leg irons and leg cuffs have often been used in combination with other mechanical restraint devices, including handcuffs and body chains (see the section on handcuffs and belly chains below). Detainees, including Al-Jazeera reporter Sami al-Haj, have reportedly been shackled and had their legs and arms bound and linked together during transfers between undisclosed facilities for unlawful detention during the rendition of prisoners,<sup>76</sup> and en route to the USA’s detention facility at Guantánamo Bay, Cuba.<sup>77</sup> Khaled Sheikh Mohammed was allegedly kept continuously shackled at Guantánamo Bay for 19 months, even when inside his cell; another Guantánamo detainee alleged that he was kept continuously handcuffed for four and a half months and shackled for seven months while detained in Kabul, Afghanistan, in 2003/4.<sup>78</sup> Abu Zubaydah reported to the International Committee of the Red Cross that during interrogations in Afghanistan in 2003 he was slammed repeatedly against walls while shackled, stating that “the pushing and pulling around meant that the shackles pulled painfully on my ankles”.<sup>79</sup>

Many metal leg restraints, including leg irons, leg cuffs and gang chains, cause pain and injury during walking when worn for significant lengths of time. The UN Special Rapporteur on Torture has supported the abolition of some forms of leg restraint, arguing that “the use of bar fetters and similar instruments of restraint should be terminated.”<sup>80</sup> Leg irons with a fixed bar, severely restricting movement and causing inherent pain and discomfort when worn for any period of time, cannot be justified as a restraint. Their use for detention and law enforcement purposes is clearly inconsistent with the UN Standard Minimum Rules for the Treatment of Prisoners, and governments should ban their use, and consider the availability of alternative restraints. The use and trading of fixed leg irons and bar fetters for security and law enforcement purposes – as well as leg restraints purposively designed to cause discomfort, such as weighted leg cuffs<sup>81</sup> – should be prohibited in all circumstances, and these items should be transferred from the controlled items list (Annex III) to the prohibited items list (Annex II). Other leg restraints such as leg cuffs connected by a chain should only be used when strictly necessary, in the absence of more humane alternative forms of restraint, and should never be applied for prolonged periods.

As a result of concerns about their use constituting ill-treatment, some Member States, including the UK and Spain, have already banned the export (and also, in the case of the UK, the marketing and brokering) of leg irons, leg cuffs and gang chains.<sup>82</sup> However, despite the UN Standards’ proscription on the use of “irons and chains” as restraints, the Regulation does not prohibit the import or export of any leg irons or other leg restraints, but includes them instead in Annex III as controlled but licensable items. Member States including Germany and the Czech Republic have continued to issue licences for the export of leg cuffs and “fettters” to a number of destinations (see Table 1). European companies have also continued actively to market such restraints: for example, a French company, Rivoilier SA, displayed leg cuffs at an international defence equipment fair in Paris in July 2008:

*Below: Leg cuffs displayed by French firm 'Rivolier' at Eurosatory international defence fair, Paris, July 2008 (© Robin Ballantyne / Omega Research Foundation)*



We recommend that fixed leg irons and bar fetters for security and law enforcement purposes - as well as leg restraints purposely designed to cause discomfort, such as weighted leg cuffs - should be reclassified under the Regulation from the list of controlled items (Annex III) to the list of prohibited items (Annex II), to prevent their international trade from contributing to torture and other ill-treatment.

We also recommend that Member States ensure that other forms of leg restraint such as chain-linked leg cuffs are not exported to end-users where there are reasonable grounds to believe that such items might be used in torture or other ill-treatment. To ensure that such risk assessments are rigorous, Member States should update and share information on the misuse of such leg cuffs by prospective end-users.

#### FINGER-CUFFS, THUMB-CUFFS AND THUMBSCREWS

Thumb-cuffs are restraint devices shaped broadly like handcuffs, but designed for use on detainees' or prisoners' thumbs. Various types of thumb-cuffs are currently commercially marketed, including fixed thumb-cuffs, which feature only a bar of metal with holes for thumbs; as well as thumb-cuffs connected by chains. It is unclear what prompted their design, although there is some indication that law enforcement officers in some places may use them in 'stress positions' to restrain a prisoner's thumbs painfully behind his or her back.<sup>83</sup> Thumb-cuffs are widely marketed by law enforcement and security equipment distributors in the European Union, as well as in China, Taiwan and the USA.<sup>84</sup> In addition, at least two (non-EU) companies advertise the supply of finger-cuffs, which have four restraint holes for fingers, rather than for thumbs.<sup>85</sup>



*Above: Thumb-cuffs from Chinese law enforcement/security equipment distributor (© Robin Ballantyne / Omega Research Foundation). Thumb-cuffs are also supplied by companies in the UK, Spain, Germany and other EU states.*

Currently the Regulation controls, but does not prohibit, the trading of thumb-cuffs.<sup>86</sup> The practical utility of thumb-cuffs for legitimate law enforcement purposes is unclear, while their propensity for use in "stress positions" amounting to torture and other ill-treatment is evident. Several Member States have already instituted national export prohibitions on thumb-cuffs, including Hungary<sup>87</sup> and the UK.<sup>88</sup> US export controls also include thumb-cuffs in a list of "specially designed instruments of torture" (0A983) - with a presumption to deny export authorisations.<sup>89</sup> They are also classified as instruments of torture in Hungarian export controls.<sup>90</sup>

Thumbscrews are specially designed instruments of torture for compressing the thumb by a screw to inflict unnecessary pain, amounting to ill-treatment.<sup>91</sup> As with thumb-cuffs, certain states, including the UK, USA and Estonia, have either banned the trade in such devices or have a presumption to deny export authorisations for them.<sup>92</sup> However, Article 1.3 of Annex III also contains "thumbscrews" among the items that should be controlled rather than prohibited. Unlike thumb-cuffs, thumbscrews do not appear to be widely traded, and we have not identified any EU companies currently manufacturing or trading them. Nonetheless it remains anomalous that the Regulation controls but does

not prohibit the export of thumbscrews, clearly an instrument with no practical use other than for torture or other ill-treatment.

We recommend that all types of “thumb-cuffs” and “thumbscrews” be reclassified in the Regulation from the list of controlled items (Annex III) to the list of prohibited items (Annex II). In addition “finger-cuffs” should be added to the list of prohibited items, to prevent their international trade from contributing to torture and other ill-treatment.

## 3.2 EQUIPMENT THAT SHOULD BE ADDED TO THE 'CONTROLLED' LIST (ANNEX III)

### HANDCUFFS

The Regulation does not currently impose export controls on “ordinary handcuffs”. Amnesty International and Omega recognise that handcuffs may be a legitimate tool of restraint in effective law enforcement, when their use is regulated in accordance with international human rights obligations and law enforcement best practice standards. However, Rule 34 of the UN Standard Minimum Rules for the Treatment of Prisoners places restrictions on the use of all restraints, stating that any instrument of restraint “must not be applied for any longer time than is strictly necessary”.<sup>93</sup> In addition Rule 33 states that “[i]nstruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment”.<sup>94</sup> Furthermore, Rule 68 of the European Prison Rules states that “[h]andcuffs, restraint jackets and other body restraints shall not be used except:

*a. if necessary, as a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority unless that authority decides otherwise; or*

*b. by order of the director, if other methods of control fail, in order to protect a prisoner from self-injury, injury to others or to prevent serious damage to property, provided that in such instances the director shall immediately inform the medical practitioner and report to the higher prison authority.<sup>95</sup>*

As with the misuse of law enforcement devices currently regulated by Annex III, handcuffs are sometimes misused for acts of torture and other ill-treatment. Like other law enforcement tools whose use may otherwise be legitimate, the supply of handcuffs to those end-users engaged persistently in torture and other ill-treatment using restraint devices should therefore be prevented.

Human rights organisations have reported many cases where handcuffs have been used for extended periods of time or tightened excessively, constituting torture or other ill-treatment, or used to facilitate other forms of torture or other ill-treatment. For example, Amnesty International has highlighted the use of 'excessive tightening of handcuffs' in the USA, and reported that a detainee held at the US Camp X-Ray, Mohamed al-Qahtani, had been restrained “with very tight handcuffs in painful positions for extended periods of time, both during the day and night, according to his lawyer.”<sup>96</sup> Similarly, Amnesty International has highlighted how in Israel excessive tightening has been associated particularly with plastic disposable handcuffs.<sup>97</sup>

Handcuffs have been used during certain types of torture and other ill-treatment in Albania,<sup>98</sup> Jordan,<sup>99</sup> Nigeria,<sup>100</sup> Paraguay,<sup>101</sup> Sri Lanka,<sup>102</sup> and Togo.<sup>103</sup> In a number of such cases, handcuffs have been used in conjunction with other forms of restraint such as shackles or leg cuffs. Handcuffs have sometimes been used together with leg cuffs to create a painful ‘leg-lock’ or ‘hog-tie’ position, even in European countries including Germany<sup>104</sup> and Slovenia.<sup>105</sup> The CPT has stated that it has “serious misgivings about the combined use of hand- and ankle-cuffs (so-called ‘hogtie-Fesselung’)”.<sup>106</sup>

The use of handcuffs when detainees or prisoners are in the facedown (prone) position has also led to instances of positional asphyxia and to death, in some cases aggravated by a subject’s mental condition and drug use.<sup>107</sup> Misuse of handcuffs for the suspension of prisoners has also been reported in a number of countries.<sup>108</sup>

Although handcuffs are widely used for legitimate law enforcement purposes, Amnesty International and Omega are concerned that because the trade in handcuffs is not controlled at all by the Regulation, traders in Member States can still supply handcuffs to security and law enforcement agencies with a grave record of misusing them in torture and other ill-treatment. Member States should prevent such exports, and be provided with the legal means to do so under the Regulation.

We recommend that the Regulation be amended to include handcuffs in Annex III (the list of controlled items), to prevent their international trade from contributing to torture and other ill-treatment.

We recommend that the Regulation should incorporate a definition of "ordinary handcuffs" based upon internal perimeter of the cuffs rather than on chain length, so as to prevent evasions of trade controls on leg cuffs which can contribute to torture and other ill-treatment.

## BATONS AND OTHER HAND-HELD IMPACT DEVICES

Batons and their variations - sticks, canes, lathis (a long wooden pole carried by all police officers in India) - are the most commonly used police weapon worldwide. They are cheap, easily manufactured locally, and are generally issued to all officers, including those who would not normally carry a firearm or any other weapon. However, they are widely misused, and particular types are also traded internationally. Amnesty International and other human rights organisations have documented their use in cases of excessive use of force, deaths in custody, torture, and other ill-treatment.

For example, in the Timbo district of Kankan in Guinea, a teacher aged about 60 was arrested on 19 January 2007 in the courtyard of his compound, taken to the military camp and then to the gendarmerie, where he was repeatedly beaten. He told Amnesty International: "When I arrived at the gendarmerie, they told me to get on my knees and then to crawl in that position. At the military camp, two gendarmes stretched me out on the ground, holding my hands on a table and two others spread my legs apart. While this was happening, another gendarme was beating me on the buttocks with his baton. They hit me about 20 times, paused for a while, then started again."<sup>109</sup>

In Mauritania, two prisoners described sexual violence using police truncheons which they experienced while being held in custody and questioned during the first quarter of 2008: "Sometimes, the torturers touched your private parts too much. On several occasions, they put a truncheon in my anus. They yelled at me and said that they were going to make me into a woman while they pushed the truncheon in my anus."<sup>110</sup>

In Moldova a group of 36 people travelling in minibuses and a car were stopped by masked police on 8 April 2009, and escorted to the Central Police Commissariat in Chişinău. While being questioned, they each had someone standing behind them and after each question they were hit with a police baton and kicked. After questioning they were allegedly forced to run along a "corridor of death" of uniformed police, consisting of five or six officers on each side, while police beat, kicked and used batons against them.<sup>111</sup>

One category of hand-held impact device, specially designed and marketed for law enforcement and of particular concern, are sjamboks and other law enforcement whips. The propensity of such implements to cause pain and injury is well-documented,<sup>112</sup> and Amnesty International has reported on their use by law enforcement officials as a tool of ill-treatment and the excessive use of force, particularly in the southern African region. In September 2007 in South Africa, for example, Welile Ndlovu, 27, was reportedly sjambokked in the street: she told journalists that "[a] policeman climbed out of the vehicle with a sjambok. He didn't say anything, he just started whipping me."<sup>113</sup>

Hand-held impact devices designed for law enforcement or security use are widely marketed by European firms, including in some cases sjamboks.<sup>114</sup> Although no Member State specifically includes hand-held impact devices in their export regulations, export controls in other states including Australia do control such instruments.<sup>115</sup> The US government has also recently proposed a similar measure to control the export from the USA of "law enforcement striking weapons", to include saps, police batons, tonfas, side handle batons, sjamboks and whips.<sup>116</sup>

We recommend that hand-held impact devices or striking devices designed for law enforcement or security use are added to Annex III (the list of controlled items), to prevent their international trade from contributing to torture and other ill-treatment.

## 3.3 TECHNICAL DEFINITIONS AND EXCLUSIONS

Four technical definitions and exclusions in the Regulation's control lists allow manufacturers and traders to avoid the Regulation's controls. In at least one case during 2009 – described below - a European law enforcement supplier has lawfully imported and promoted electric-shock stun prisoner restraints, despite essentially similar 'stun belt' restraints



being classified by the Regulation as having no other practical use than for torture or other ill-treatment, and thus prohibited for import or export within the EU.

Such commercial activity is clearly contrary to the Regulation's intentions, and alternative definitions to prevent such activity are thus recommended below.

#### LEG CUFFS EXPORTED AS COMPONENTS

As discussed in Section 3.2, the list of controlled items in Annex III currently excludes 'ordinary handcuffs', defined as cuffs with an "overall dimension, including chain, measured from the outer edge of one cuff to the outer edge of the other cuff, between 150 and 280mm when locked and have not been modified to cause physical pain or suffering".<sup>117</sup> This exclusion allows companies to supply 'oversized' [hand]cuffs with a short chain attached, which may be exported from the EU without control, and can then be adapted to manufacture leg cuffs simply by attaching a longer chain. This practice, in effect circumventing export controls, was carried out by a UK company previously documented by Amnesty International.<sup>118</sup>

Amnesty International and Omega are concerned by further evidence suggesting that restraints and parts exported by other European manufacturers are being incorporated into shackles and leg restraints around the world. Larrañaga y Elorza is a Spanish company manufacturing a range of restraint devices which have previously included belly-chains and leg cuffs. Concerns about the transfer of such equipment were highlighted by UK and Spanish journalists in 2000.<sup>119</sup> Larrañaga has subsequently continued to manufacture a range of handcuffs, including the 'Model 5050' which has oversized cuffs, under the trade name 'Alcyon'. It continues to promote Alcyon restraints internationally at European trade shows such as the IWA Sporting and Hunting show in Nuremberg, Germany.<sup>120</sup> Larrañaga has stated that it no longer manufactures complete leg cuffs.<sup>121</sup> Nonetheless at least two companies in other countries are continuing to offer for sale leg restraints and belly chains incorporating 'Alcyon' cuffs. In December 2009, the Venezuelan company Centurion CA, to which Larrañaga has confirmed it has exported its products, was continuing to offer for sale a range of Alcyon-branded products including "shackles for feet" (*grilletes para pies*).<sup>122</sup> In early 2010 the Assegai Trading Company (South Africa) was likewise continuing to promote both the "Model 5240 Belly Chain", constructed using "model 5050" handcuffs, and leg cuffs, although Larrañaga has stated that it does not export its products to Assegai.<sup>123</sup>

Following reported evasions of trade controls on leg cuffs by UK companies, the UK Government introduced a new definition of leg cuffs based upon cuff perimeter rather than chain length.<sup>124</sup>

We recommend that the Regulation should incorporate a definition of "ordinary handcuffs" based upon internal perimeter of the cuffs rather than on chain length, so as to prevent evasions of trade controls on leg cuffs which can contribute to torture and other ill-treatment.

#### HIGH-VOLTAGE ELECTRIC-SHOCK STUN WEAPONS OPERATING BELOW 10,000 VOLTS

Amnesty International and Omega consider that high-voltage electric-shock stun weapons designed for use on human beings are inherently prone to misuse. They can inflict severe pain at the push of a button without leaving substantial marks, and can further be used to inflict repeated shocks.

Annex III of the Regulation defines controlled portable electric-shock devices as those "having a no-load voltage exceeding 10 000 V", an exemption which was originally inserted to exclude devices such as electric cattle prods designed for agricultural and other use.<sup>125</sup> In general the physical design and technical specifications of cattle prods and other devices intended for use on animals can be easily be physically distinguished from high-voltage electric-shock stun devices designed for law enforcement and security use.

A number of high-voltage electric-shock stun guns and stun batons designed for use on human beings and traded on the international market, however, have been promoted as operating at a voltage level of 10,000 volts or below, and would therefore not currently be covered by the Regulation, despite the risk of their use to inflict torture or other ill-treatment, virtually indistinguishable from slightly higher voltage devices.<sup>126</sup>

We recommend that the 10,000 volt control exemption be removed from the Regulation to ensure that all high-voltage electric-shock stun weapons designed for law enforcement and security use are covered by the Regulation's list of controlled items (Annex III).

## STUN BELTS, STUN CUFFS AND OTHER HIGH-VOLTAGE ELECTRIC-SHOCK STUN RESTRAINT DEVICES

The use of any electric-shock stun device attached to the human body and designed for use on prisoners or detainees cannot be justified under international law prohibiting torture or other ill-treatment, and UN standards on the use of force by law enforcement officials, which require any use of force to be proportional and necessary to the achievement of a legitimate objective. Even when such stun restraints are worn but not activated, they may constitute cruel, inhuman or degrading treatment, maintaining prisoners in constant fear of instant pain for as long as they are worn.

Accordingly, the Regulation prohibits the import or export of "electric-shock stun belts designed for restraining human beings by the administration of electric shocks having a no-load voltage exceeding 10,000 volts".<sup>127</sup>

However, companies manufacturing such 'stun belts' also manufacture other forms of 'stun restraint devices', based on the same technology, but designed to be placed on other human limbs or body parts. One such device is the REACT/Band-It system produced by Stinger Systems Inc (formerly Stun Tech Inc) in the USA, which delivers repeated eight-second shocks at 50,000V at a rising intensity during the eight seconds.<sup>128</sup> Activated by a remote control device from up to 175 feet away, the shock can be repeated at will after a 1-second delay.<sup>129</sup> Originally designed to be placed "over the left kidney area", 'Band-It' devices are now designed to be worn on eight places on the human body, including limbs.<sup>130</sup> The US government has also recently proposed to classify such 'shock sleeves' as "specially designed implements of torture", and to ban their export.<sup>131</sup>

Although Amnesty International and Omega are unaware of any EU-based manufacturers of electric-shock stun restraints, and there are a relatively small number of reports of EU companies promoting or distributing such devices,<sup>132</sup> at least one Spanish-based trader has offered US-made 'stun cuffs' for sale since after the introduction of the Regulation (see Section 4.7 below).<sup>133</sup> Amnesty International and Omega have learned that a second Spanish-based trader has also arranged with the US-based manufacturer of these devices to promote 'stun cuffs' to potential users within other Member States. During 2009, this firm imported a 'stun cuff' device into the EU for demonstration purposes, although without yet making any sales.<sup>134</sup> While imports and exports of functionally similar stun *belts* into or from the EU would be prohibited by the Regulation, the transfer of stun cuffs or other electric-shock stun restraint devices may not yet be banned.



Above: Electric-shock 'fettlers' photographed at Chinese policing equipment trade fair, 2004 (© Robin Ballantyne / Omega Research Foundation). Functionally similar US-made electric-shock stun cuffs have been promoted by at least two Spanish companies.

We recommend that the existing prohibition in the Regulation on electric-shock stun 'stun belts' be extended to cover 'stun cuffs' and any other electric-shock stun devices designed for attachment to the body of a prisoner or detainee. Furthermore, given the concerns about the 10,000 volt exemption in the Regulation, this prohibition should cover all electric-shock stun restraint devices regardless of the levels of voltage and power used. All such items should be included in the list of prohibited items (Annex II).

#### SPECIALLY DESIGNED COMPONENTS AND ACCESSORIES FOR CONTROLLED AND PROHIBITED EQUIPMENT

The Regulation does not specifically control international transfers of specially designed components and accessories for controlled and prohibited equipment, although this is common practice in other areas of export control.<sup>135</sup> Some security equipment manufacturers have apparently sought to evade export controls by supplying their products in kit-based component form. For example, US company SLS Products offers to ship specially designed kits of electric-shock stun weapon components, specifically disassembled to avoid US export regulations on such weapons. According to their website:

*"Order our stun gun kit and you will receive it no matter what country you are in....Stun Gun Kits are shipped Internationally to avoid strict export regulations. Our Stun Gun kit is sent in 2 shipments. The first shipment includes the electric parts fully assembled. The second shipment is the plastic molded case with 4 screws. The instructions will NOT be shipped."<sup>136</sup>*

We recommend that in order to prevent such evasions, Articles 3, 4 and 5 of the Regulation should be applied to specially designed components and accessories for items listed in Annex II and III of the Regulation.

## 4 OTHER CONCERNS

### 4.1 EXCLUSIVELY LIST-BASED CONTROLS

Like many trade control systems, EC Regulation 1236/2005 is list-based, containing categories of specifically named items whose international trade is either prohibited or controlled. List-based systems provide clarity for exporters and importers, but on their own can have inherent weaknesses, including:

- Not controlling a range of products even though they fall within the intended scope of the agreement, because they are not specifically named on the control lists;
- The delay often experienced between the manufacture, transfer and use of newly designed equipment, and the time taken for it to be added to a control list;
- The potential for suppliers to evade controls simply by re-naming or re-specifying their products.

Past examples illustrate the need for governments to prevent items that were not previously considered by the drafters of trade control legislation from being exported to end-users where such items would almost certainly be used for torture or other ill-treatment, or where their export would pose a high risk of contributing to such ill-treatment. These have included “prisoner disorientation equipment” (reportedly supplied to UAE law enforcement authorities in the early 1990s)<sup>137</sup> and tenders from a verified Bangladesh import broker in 2004 for a suite of interrogation equipment including “interrogation hangers” and “interrogation foot heaters...[to] 400 degrees C”, reportedly obtained by Bangladesh's Rapid Action Battalion.<sup>138</sup> In other cases, outlined in this report, small technical changes introduced into devices with no other practical use than for torture or ill-treatment, such as body-worn ‘stun cuffs’, developed from larger ‘stun belts’, can cause them to fall technically outside the Regulation and existing national trade controls.

In the light of these concerns, Amnesty International and Omega have previously urged the European Commission and Member States to add a “torture end-use catch-all” clause to the Regulation. This would allow governments to prohibit the trade of any items not listed in the Annexes that clearly have no practical use other than for the purposes of torture and other ill-treatment; or where there are reasonable grounds to believe that such items would be used for the purposes of torture and other ill-treatment.

Following a review of its national export controls, which included an extensive public consultation exercise, the UK is developing proposals for such a “catch-all” end use control.<sup>139</sup> Under these proposals the UK would seek “to introduce an end use control on torture equipment, enabling the UK to licence – and thus refuse – the export of any goods from the UK which were destined for use in torture or similar inhumane or degrading acts.”<sup>140</sup>

The UK government has stated that it intends to seek the introduction of such a catch-all clause at EU level, rather than nationally, in order to ensure that the EU as a whole operates to the same standards, and that UK exporters are not able to circumvent the control simply by exporting via other Member States. We understand that discussions between Member States and the European Commission on this proposal have been initiated.

Similar initiatives are also taking place outside the EU. Following a process of public consultation, the US Department of Commerce's Bureau of Security and Industry (BIS) have recently proposed important changes in their regulation of security equipment that could be used for torture or ill-treatment, to introduce a partial de facto 'catch all' clause, expanding existing controls on “specially designed implements of torture” in order to “make clear that the items listed are examples of specially designed implements of torture rather than an exclusive list of such implements.” The BIS recommendations have still to receive final approval.<sup>141</sup>

We welcome initiatives to incorporate a “torture end-use catch all” clause in the Regulation, and strongly recommend that the European Commission and Member States adopt a control of this kind, which would allow, on the basis of prior information, Member States to licence and thus refuse the export of any items which are at substantial risk of being used for capital punishment, torture or other ill-treatment by its destined end-users.

## 4.2 NATIONAL MEASURES

Amnesty International and Omega remain concerned about the potential danger of the Regulation having the unintended consequence of establishing national controls at a level below those already existing in certain Member States. Since the Regulation is binding in its entirety and directly applicable in all Member States, Amnesty International and Omega expressed concern when it was introduced that the Regulation's provisions could replace some stronger existing national controls: allowing for the trade of certain items that had previously been prohibited by some Member States, or limiting the scope of items to be covered by stronger controls at the national level.

Partly to address such concerns, the Regulation explicitly allows Member States to "adopt or maintain a prohibition on the export and import of leg irons, gang chains and portable electric shock devices" [rather than simply controlling their export];<sup>142</sup> and to "impose an authorisation requirement on the export of handcuffs which have an overall dimension including chains, measured from the outer edge of one cuff to the outer edge of the other cuff, exceeding 240mm when locked."<sup>143</sup>

Thus the Regulation can already accommodate more restrictive national controls on a few particular items. Amnesty International and Omega believe that Member States should be allowed to adopt additional stronger national controls on any other items listed in Annex III of the Regulation; or to prohibit at a national level other items they have identified as having no other practical purposes than for capital punishment, torture or other ill-treatment, or which are conducive to such ill-treatment. Such measures would allow individual Member States to swiftly respond at the national level, for instance, to problematic new technologies and to questionable exports by specific exporters who are nationals or residents of their country, rather than having to wait until consensus on such a problem has been agreed at the EU level.

In the absence of a 'torture end-use catch-all' clause being introduced into the Regulation, we recommend that the European Commission and Member States amend the Regulation to add a provision to the effect that, notwithstanding the provisions in Articles 5 and 6, a Member State may unilaterally:

- (i) adopt or maintain a prohibition on the export and import of any other item which it considers to be at substantial risk of being used for capital punishment, torture or other ill-treatment; and
- (ii) adopt or maintain a requirement for licensing the export and import of any other item which it considers could be used for the purpose of capital punishment, torture or other ill-treatment.

We urge Member States to adopt such controls at national level as soon as possible.

## 4.3 BROKERING CONTROLS

The Regulation does not at present control companies or individuals within the EU from brokering or arranging the transfer of equipment between third countries outside the EU, where the items do not enter the EU customs territory; even where such transfers are known to be intended for capital punishment, torture and other ill-treatment in third countries.

Amnesty International and Omega are concerned that without such brokering controls within the Regulation, and with the existing lack of brokering controls in some Member States, the European Union's efforts to ban the international trade in "torture equipment" beyond Europe, and to control the EU trade in other security and law-enforcement equipment to prevent that trade from contributing to torture and other ill-treatment, will be undermined.

Such brokering activity already reportedly takes place. In January 2009, journalists reported that the French distributor of US-made 'Taser' electric-shock stun guns had admitted brokering the supply of Tasers to Senegal, which were physically supplied from the USA, according to the French company, and thus would not have required a French export licence.<sup>144</sup> In 2007, Omega found that at least 150 companies<sup>145</sup> in 21 Member States<sup>146</sup> had marketed, supplied, or offered to supply high-voltage electric-shock stun batons and stun guns, often without the need to bring such equipment into the EU. Of

these, 17 companies in 7 Member States (Austria, France, Germany, Lithuania, Portugal, Sweden and the UK) were known to have offered to supply stun batons and stun guns that were originally manufactured outside of the EU. Similarly, at least 32 companies in seven Member States<sup>147</sup> had marketed, supplied or offered to supply leg irons, shackles and leg cuffs. Of these, nine companies in three Member States (France, Germany and United Kingdom) were known to have supplied or offered to supply leg irons and shackles originally manufactured outside of the EU.

### EXAMPLE: UK EFFORTS TO COMBAT THE BROKERING OF TORTURE EQUIPMENT

In May 2007, Omega researchers found that a representative of a Chinese company was marketing high-voltage electric-shock stun batons at a policing and security equipment fair in Birmingham, UK.<sup>148</sup> The company representative offered to supply several hundred such batons, to be shipped directly from an East Asian factory at \$6.99 unit cost, and labelled as "torches". The UK is the only Member State which has introduced full (and extra-territorial) controls to ban brokering of "torture equipment" by UK individuals or companies, or by individuals and companies within the UK; and to prohibit the marketing and promotion of such items. This legislation allowed the trader to be interdicted preventively, before the deal had been completed. In the event, the company representative was prosecuted for possession of an illegal firearm, but not for illegal trading activities.

Other Chinese and UK companies were ejected from the Defence Systems and Equipment International (DSEi) trade fair in London in September 2007, where they had been promoting the sale of leg irons and other items whose trade is effectively prohibited under the UK's Trade in Goods (Control) Order.<sup>149</sup> This case led to a cross-party statement from the UK Parliament's Committee on Strategic Export Controls calling for tighter trade controls in this area.<sup>150</sup>

We recommend that Member States and the European Commission should control brokering activities by companies and individuals within the EU who wish to arrange the transfer of items listed in the Regulation between third countries. This would be consistent with the European Council's Common Position on the Control of Arms Brokering.<sup>151</sup>

Thus we recommend that Member States and the Commission should:

- prohibit the brokering of transactions by any natural or legal person within the EU involving international transfers from any place, including sales and exports, of items with no practical use other than for capital punishment, torture or other ill-treatment, included in Annex II of the Regulation;
- introduce effective mechanisms to control the brokering of transactions involving transfers of any items listed in Annex III.

Such controls should include instances where (i) the brokering activity is conducted outside the EU by registered companies, nationals and permanent residents of Member States, or (ii) where the items are being brokered by a legal or natural person within the EU, but the items do not physically enter the EU.

## 4.4 TRANSFERS INTO AND BETWEEN MEMBER STATES

Although Article 4 of the Regulation requires that "[a]ny import of goods listed in Annex II shall be prohibited, irrespective of the origin of such goods", there is no corresponding provision to regulate the *import* of those items listed under Article III. Furthermore, there are no mechanisms regulating the international transfer of Annex III equipment between Member States. Amnesty International and Omega have two areas of concern regarding these limitations.

Firstly there exists the danger that policing and security equipment could be transferred into and within the EU to recipients who would themselves use such equipment for torture or other ill-treatment. The European Commission has argued that all Member States have legislation banning torture and cruel, inhuman or degrading treatment or punishment, obviating the need for national controls on intra-EU transfers. However, there have nonetheless been incidents of torture

and other ill-treatment using electric-shock devices, chemical irritants and restraint devices perpetrated within a number of Member States.<sup>152</sup>

For example, Amnesty International has raised concerns about the death of Juan Martínez Galdeano in Spain in July 2005, potentially as a result of ill-treatment and the excessive use of force incompatible with the prohibition on cruel, inhuman or degrading treatment, using a high-voltage electric-shock stun weapon. On 24th July 2005, Galdeano went to the local headquarters of the Guardia Civil in Roquetas de Mar (Almería) to settle a quarrel with a man after their cars collided in. Guardia Civil officials stated that when Juan Martínez Galdeano was asked to undergo an alcohol test he became aggressive. A Guardia Civil officer used a 'taser' and an extensible baton to restrain him. He was arrested for public disorder and for resisting law enforcement officials and had both his hands and his feet handcuffed. Official sources stated that several police officers had to restrain Juan Martínez Galdeano and put him on the ground as he became aggressive again while they tried to transfer him to the local detention facility. Eventually he experienced a seizure and died. The autopsy, performed by the Institute of Forensic Medicine of Granada, concluded that "the immediate cause of the death" was "an acute respiratory or cardiorespiratory insufficiency". The examination of the body of the victim found marks consistent with reports of ill-treatment and the use of excessive force.<sup>153</sup>

In March 2004 two Romani men gathering firewood in the forest near Lukovit, Bulgaria, were stopped by two police officers and several forest guards. One man was reportedly knocked unconscious with a rifle butt, handcuffed, beaten, and prodded with an electric-shock stun baton, while the second was made to dig a pit as "a grave for the two of [them]", then beaten, according to reports.<sup>154</sup>

Although such acts of ill-treatment may not be systematic or pervasive in most European Union countries, its occurrence nonetheless underlines the need for Member States to retain the *ability* to assess the risk of security equipment transferred within the EU being used for torture and ill-treatment, and to prevent such international transfers if that risk is judged substantial; as is already the case with *military* equipment transferred between Member States.<sup>155</sup>

Secondly, the unregulated intra-EU transfer of security equipment makes it possible for dealers in such equipment to exploit differences between the implementation of the Regulation in different Member States. As can be seen from Section 2.1 above, some Member States have authorised exports of equipment falling under the control of the Regulation to third countries where there nonetheless appears to have been a substantial risk of that equipment being misused for torture and other ill-treatment, and to which other Member States have refused export authorisations.

It would, therefore, be possible for a dealer to arrange for an intra-EU transfer of security equipment from a manufacturer in a Member State with a more restrictive interpretation of the obligations under the Regulation, to another Member State with a more permissive approach to granting export licenses, and from there to gain export authorisation to a third country outside the EU, thus undermining the purpose of the Regulation to prevent the risk of misuse of such items for torture and other ill-treatment.

Under Article 7 (1) of the Regulation, national controls for intra-EU trade can already be adopted by Member States to prohibit "the export and import of leg irons, gang chains and portable electric-shock devices."<sup>156</sup> While torture and ill-treatment persist within the EU, and while some Member States continue to adopt more permissive export practices than others, Amnesty International and Omega believe that all Member States should adopt intra-EU controls on all items covered by the Regulation, as outlined below.

We recommend that all Member States introduce without delay national import and export control mechanisms to control the intra-EU trade in leg irons and gang chains, as already explicitly permitted under Article 7.1 of Regulation.

We also recommend that the European Commission and Member States should amend the Regulation to require importers of any item listed in Annex III to obtain an import authorisation on a case-by-case basis, and that such authorisations should be rigorously assessed to determine whether there is a substantial risk that the items will be used for torture or other ill-treatment, either in the EU, or once further traded outside the EU.

## 4.5 EQUIPMENT IN TRANSIT THROUGH THE EU

Under the Regulation, export authorisations for items listed in Annex III are not required for items which transit through the EU without remaining there – even if companies are known to be sending Annex III equipment in transit through the EU to countries where there is a substantial risk they will be used for torture or other ill-treatment. This is contrary to Member States' practices in other areas of export control, where many States control the transit of military weapons through their territories.<sup>157</sup>

We recommend that the Regulation should be amended to remove the exemption for the transit of items falling under Annex III of the Regulation, and a provision inserted to require specific transit authorisation for all items listed in Annex III; and also to explicitly prohibit the transit of all equipment listed in Annex II of the Regulation.

## 4.6 TECHNICAL ASSISTANCE AND TRAINING

In his 2005 report to the Commission on Human Rights, the UN Special Rapporteur on Torture highlighted the need to regulate the provision of technical assistance and training that is used to facilitate acts of torture and other ill-treatment:

*“A number of States are important providers of training and assistance to the military, security or police forces of foreign States. This training and assistance may have the potential to benefit recipient communities by providing better-skilled military or law enforcement officers who respect the rule of law and seek to promote and protect the rights of the civilian population. However, unless such transfers are stringently controlled and independently monitored, there is a danger that they will be used to facilitate torture and ill-treatment.”<sup>158</sup>*

Article 3 of the Regulation prohibits “[t]he supply of technical assistance related to items listed in Annex II (the list of prohibited items), whether for consideration or not, from the customs territory of the Community, to any person, entity or body in a third country”, as well as the import of such technical assistance into the EU.<sup>159</sup>

However, the Regulation does not control the provision of technical assistance and training by EU citizens or companies to persons in other countries for the use of Annex III (controlled) equipment, despite evidence that such training has been provided by EU nationals to law enforcement units with an established record of torture and ill-treatment using such equipment.

For example, film footage broadcast in 2008 on a French TV channel reportedly showed training in the use of US-manufactured Taser high-voltage electric-shock stun guns, being delivered by a member of a French municipal police force to a private security company in Cameroon, whose trainees included several former police officers.<sup>160</sup> Although there is no suggestion that the training included or endorsed abusive techniques, Amnesty International has documented a decade of persistent torture by Cameroonian state security forces, and persistent impunity for such abuses.<sup>161</sup> The US manufacturer of Taser devices, Taser International, has told Amnesty International that it has never sought or obtained authorisation for the export of Taser devices to Cameroon.<sup>162</sup> Nonetheless the unregulated provision of training to a private security company for an electric-shock stun weapon controlled by EU law as a device which can be used for torture, indicates the clear need for the regulation of such services.

We recommend that the Regulation should be amended to require Member States to introduce controls on the international provision of training and technical assistance for Annex III equipment; and that such training and technical assistance should not be authorised if it involves the transfer of skills, knowledge or techniques likely to lend themselves to capital punishment, torture and other ill-treatment.

## 4.7 PROMULGATION, OUTREACH AND INFORMATION GATHERING

The Regulation's effectiveness is reliant not only upon rigorous implementation and licensing, but also upon the willingness and ability of Member States to identify those companies within their territories likely to be involved in licensable activities, and to inform them of the Regulation's effect on their activities. Such outreach will also provide an important source of information about the composition and activities of the relevant commercial sector, to assist national authorities in detecting breaches of the Regulation.



Of the 27 Member States contacted by Amnesty International and Omega during 2008, **seventeen** States reported that they had undertaken some activities to publicise the new legislation and penalties.<sup>163</sup> **Ten** States provided no information regarding their promulgation activities.<sup>164</sup>

The level of promulgation and outreach undertaken by Member States, however, appears to vary widely:

- The promulgation activities of certain states - Belgium, Lithuania, Luxembourg, Malta and the Netherlands – appear to have been restricted to the publication of the relevant legislation or decree in the Official Gazette and/or placing the information on the government website;<sup>165</sup>
- Cyprus, Germany, Greece, Finland, Latvia, Poland and Spain have also produced leaflets, issued press releases, distributed model application forms or have sent details of the Regulation to relevant supplier and industry bodies;<sup>166</sup>
- Estonia, Slovenia and the UK<sup>167</sup> stated that they have also involved manufacturers and suppliers in seminars and consultations relating to the Regulation.

Five Member States have stated that they were not aware of the existence in their countries of any producers (Belgium,<sup>168</sup> Cyprus,<sup>169</sup> Italy,<sup>170</sup> Finland,<sup>171</sup> Malta<sup>172</sup>) or exporters (Belgium,<sup>173</sup> Cyprus,<sup>174</sup> Italy<sup>175</sup>) of equipment covered by the Regulation. An internet and company survey undertaken by Omega and Amnesty International in 2009-10 demonstrates the existence since 2006 of companies in three of these five countries which, while they may not manufacture the equipment themselves, state that they supply items covered by the Regulation (see table 2 below). In some cases these traders may be marketing or supplying their products to domestic customers, including governments. However, they include one Belgian company which states that it distributes its products “only outside of Europe, more especially in the Maghreb (North of Africa)”, and which advertises US-made electric-shock stun restraint devices on its website;<sup>176</sup> and an Italian company offering for sale similar stun restraint devices, despite the import and export of ‘stun belts’ being prohibited under the Regulation.<sup>177</sup> When contacted by Amnesty International this company stated that it did not sell these products any longer, and that its website would be updated in a few weeks time.<sup>178</sup>

**TABLE 2: TRADERS IN REGULATION-CONTROLLED ITEMS IN BELGIUM, FINLAND AND ITALY OPERATING BETWEEN 2006 AND 2010**

*Note - Data for this table below was gathered between 2006 and 2010 and is held by Omega. The table is not exhaustive but identifies some companies that trade in items controlled by the Regulation. It does not indicate that these companies have breached the Regulation. It is important to note that the companies mentioned may not have been involved in continuous trading of these items throughout the entire period of data-gathering (2006-2010).*

Company	Country	Equipment offered	Manufacturer (M)/ Supplier (S)	Dates equipment offered	Latest Source
Sirien S.A./NV	Belgium	Annex II 2.1: Stun belt Annex III 2.1: ES Projectile [Stinger S200]	S	2007-2010	<a href="http://www.radardepolice.be/fr/imgsec/PhotoAlbum.asp?ShowSub=STINGER">http://www.radardepolice.be/fr/imgsec/PhotoAlbum.asp?ShowSub=STINGER</a> accessed 11/1/2010
FN Herstal	Belgium	Annex III 3.3: OC Projectile for FN303	M	2006-2010	<a href="http://www.fnherstal.com/index.php?id=255">http://www.fnherstal.com/index.php?id=255</a> Products>Less Lethal accessed 11/1/2010
Alex SA	Belgium	Annex III 3.1: Irritant spray	S	2008-9	<a href="http://www.tacticops.com/index.php?cPath=123_132">http://www.tacticops.com/index.php?cPath=123_132</a> accessed 12/6/2009
Hantaurus Ltd Oy	Finland	Annex III 2.1: ES Projectile [Taser]	S	2007	'Poliisi luottaa edelleen etälamauttimeen',

Company	Country	Equipment offered	Manufacturer (M)/ Supplier (S)	Dates equipment offered	Latest Source
					<i>Keskisuomalainen</i> , 22/11/2007, quotes 'Hantaurus' manager as an importer of Tasers.  N.B. Taser logo continues to appear on website, although not listed in product list <a href="https://www.hantaurus.fi/">https://www.hantaurus.fi/</a> >Tuotemerkeistä[Brands ] <sup>179</sup> accessed 11/1/2010
Sarco Oy	Finland	Annex III 2.1: ES Projectile [Stinger S200]	S	2008-2010	<a href="http://www.sarco.fi">http://www.sarco.fi</a> accessed 11/1/2010
Defence System SRL.	Italy	Annex III 2.1: Stun baton/gun Annex III 3.1 / 3.3: OC spray	S	2006-2010	<a href="http://www.defencesystem.it/defens/assieme.htm">www.defencesystem.it/defens/assieme.htm</a> accessed 11/1/2010
Access Group SRL	Italy	Annex III 2.1: Stun baton/gun Annex III 3.1 / 3.3: OC spray	S	2007-2010	<a href="http://www.accessweb.it/en/">www.accessweb.it/en/</a> accessed 11/1/2010
Joseph Stifter s.a.s./ KG	Italy	Annex III 2.1: Stun baton/gun Annex III 3.1 / 3.3: OC spray Annex III 1.3: Thumb-cuffs	S	2007-2010	<a href="http://www.armishop.it">www.armishop.it</a> accessed 11/1/2010
Armeria Frinchiilucci S.r.l	Italy	Annex III 2.1: Stun baton/gun Annex III 3.1 / 3.3: OC spray	S	2007-2010	<a href="http://www.frinchiilucci.it/department/1411/Difesa-e-Sicurezza.asp">http://www.frinchiilucci.it/department/1411/Difesa-e-Sicurezza.asp</a> accessed 11/1/2010
PSA Srl	Italy	Annex II 2.1: Stun belt Annex III 2.1: ES Projectile [Stinger S200]	S	2008-2010	<a href="http://www.psa-srl.eu">www.psa-srl.eu</a> accessed 16/6/2009 and 11/1/2010

## EXAMPLE: INADEQUATE ENFORCEMENT AND OUTREACH TO POTENTIAL TRADERS OF PROHIBITED ITEMS

Despite the Regulation's prohibition of both the export and import of electric-shock stun restraint belts into the European Union, introduced in July 2006, one Spanish-based trader nonetheless began in September 2006 to offer US-made stun belts for sale. It is unclear whether the company physically imported any stun belts into the EU during this period. By November 2007 the trader had removed promotional material for stun belts from their website and replaced it with promotional material for 'stun cuffs', a similar device designed to be placed around a detainee's limbs, which is not currently banned by the Regulation. When Omega contacted the company and pointed out the prohibition on the export from or import into the EU of stun belts, the company's Chief Executive Officer stated that the company had not imported, exported or sold any of the stun belts or stun cuffs; denied that stun cuffs were available to order through their website; and subsequently removed the relevant pages from their website.<sup>180</sup> Similarly, Omega also identified an Italian company offering US made stun belts for sale since 2008. When contacted by Amnesty International in December 2009 this company stated that it did not sell these products any longer, and that its website would be updated accordingly.

The companies' ability to openly advertise electric-shock stun belts - an item absolutely prohibited for import or export by European law on the grounds that its only practical use is for torture or other ill-treatment - shows that strict enforcement of the Regulation is still lacking, and strongly illustrates the need for Member States to inform traders of their obligations stemming from the Regulation and established under national laws; and for companies, once informed, to act according to those obligations.

To conduct outreach and awareness-raising work effectively, we recommend that Member States take active steps to identify companies or individuals involved in the manufacture, distribution, sale, brokering or advertising of items controlled by EC Regulation 1236/2005; and to inform these companies of their obligations stemming from the Regulation.

## 4.8 ENFORCEMENT

Even where trade controls exist, it remains difficult to detect illicit shipments of small, mass-produced equipment of the type included in the Regulation's control lists. It is therefore important that Member States provide sufficient financial, technological and human resources to allow the Regulation to be effectively integrated into wider export control enforcement efforts by police, intelligence and customs services, and for breaches of the Regulation to be detected and those responsible penalised.

### PREVENTATIVE ENFORCEMENT

In December 2000, the Wassenaar Arrangement, a grouping of 40 arms-exporting states many of which are also Member States,<sup>181</sup> agreed a collection of best practices for effective enforcement of export controls.<sup>182</sup> Although these are non-binding recommendations and do not specifically relate to the trade in items covered under the Regulation, some are nonetheless applicable to this control system, and can contribute to an effective governmental enforcement program:

1. *Use of threat assessment techniques and procedures for evaluating parties involved in a proposed export transaction, paying particular attention to those considered to be suspicious, unreliable, or presenting a high risk of diversion.*
2. *Maintenance of a list of problem end-users to identify license applications deserving closer scrutiny.*
3. *Confirmation of the stated end-user and end-use of items to be exported prior to issuing an export license. As appropriate, this can be accomplished by several means, ranging from documentation to on-premise checks of the end-user and end-use.*
4. *Obtaining assurances regarding the end-use and non re-export of licensed items, as appropriate.*

*5. Examination of goods and the documentation required to be presented at point of export, using risk assessment techniques to aid selection. Detaining suspect shipments and seizing unauthorised or illegal exports, which may include those that are passing in-transit."*

*6. As necessary, confirm that exported goods have reached their intended destinations using appropriate means, ranging from documentation to on-site verification.*

*7. Conduct industry awareness programs to improve exporters' understandings of the objectives and coverage of export controls, including controls on software and technology.*

*8. Seek voluntary compliance by industry. As appropriate, encourage development by industry of internal compliance programs.*

*9. Keep industry and the general public apprised of penalties for failure to comply, using, as appropriate, cases of successful prosecution as examples.<sup>183</sup>*

#### PHYSICAL INSPECTION OF EXPORTED, IMPORTED AND IN-TRANSIT ITEMS

Evidence exists that some exporters both within and outside the EU misrepresent items controlled under the Regulation. These cases underline the need for customs authorities to ensure that their regular 'spot-check' physical inspections of cargoes include efforts to identify equipment controlled under the Regulation. Since 1997, for example, Germany has required export authorisations for electric-shock stun weapons;<sup>184</sup> yet several German suppliers who were reportedly contacted by German TV reporters in February 2007 offered to send stun guns to Uzbekistan without export authorisation. Customs officials reportedly confirmed to members of the German Parliament that they had uncovered unauthorised shipments of electric-shock stun devices from Germany to Georgia, Bangladesh, Romania and Iran.<sup>185</sup> The two companies involved were punished by a fine of 3000 euros: reportedly lower than the cost of the electric-shock stun equipment deal itself.<sup>186</sup>

Similarly, Chinese manufacturers interviewed by a researcher for the Omega Research Foundation at a UK trade fair during 2007 stated that they routinely represent electric-shock stun weapons on shipping documentation as 'torches'<sup>187</sup> or other non-licensable electrical equipment.

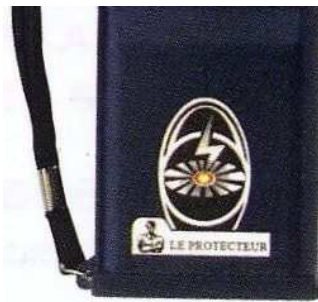
The serious risk of torture and other ill-treatment through the use or misuse of such equipment makes it important that the identification of illicit shipments of these items is prioritised alongside those of weapons, narcotics, and other items for which customs surveillance and interdiction is much better established.

## EXAMPLE: STUN BATON AND STUN GUN SEIZURES IN AUSTRALIA LINKED TO MEMBER STATE

The importance of physical inspection measures is illustrated by the Australian Customs Service seizure in March 2005 of high-voltage electric-shock stun guns and stun batons at Melbourne's International Mail Center.<sup>188</sup> The weapons appear to have been labelled with the logo of a French stun gun distributor, and were found on inspection to have been imported into Australia without the necessary authorisation.



PHOTO: AUSTRALIAN CUSTOMS SERVICE



*Above left: Stun guns seized at Melbourne International Mail Centre in early March 2005. The two 'Titan' stun guns on the top left appear to carry the logo of French company 'Le Protecteur'. (© Australian Customs and Border Protection Service)<sup>189</sup> N.B. This does not in itself indicate that Le Protecteur was necessarily involved in shipping these items themselves, and there is no suggestion that the French company was involved in any illegal activity.*

*Top right: Close-up of logo from stun guns seized at Melbourne International Mail Centre (© Australian Customs and Border Protection Service)*

*Bottom: Close-up of logo from stun guns distributed by Le Protecteur (France), showing 'Le Protecteur' logo*

## EFFECTIVE DATA HANDLING AND EXCHANGE

As well as detecting and intercepting mis-declared and smuggled items, a basic part of export control enforcement is the ability of customs authorities to determine whether items being exported – and openly declared – require an export licence in the first place, and whether they have received one.<sup>190</sup> Currently it appears that EU customs authorities are unable to do this systematically for Regulation items from the data collected on imports and exports.

EU customs authorities gather information on items being exported principally through the Single Administrative Document (SAD), transit forms, or computerised export or transit declarations. These require exporters to provide a standardised Commodity Code (CN Code) of the exported items<sup>191</sup> and a textual description of the items.<sup>192</sup> However, the CN codes used to describe exported items do not currently have specific entries for the items covered by the Regulation. Since textual descriptions are not standardised on customs declarations, it is only through laborious manual inspection of each export declaration received – a task beyond the capacity of almost any customs authority – that it would be possible to determine whether the described items require an export licence under the Regulation.<sup>193</sup>

CN Code listed in EC Regulation 1236/2005	Description	Potentially Includes
8543 89 95	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof	Microwave amplifiers, flight data recorders, electrolysis machines, electric-shock stun batons, electric-shock stun belts
9304 00 00	Other arms (for example, spring, air or gas guns and pistols, truncheons), excluding those of heading 9307	Police truncheons, recreational air guns, electric-shock stun batons
7326 90 98	Other articles of iron and steel: other	Forged mechanical components for machinery, leg irons
8301 50 00	Clasps and frames with clasps, incorporating locks	Door latches, leg irons
3926 90 99	Other articles of plastics and articles of other materials of headings 3901 to 3914 [plastics and rubber]	Children's toys, detention leg restraints

This lack of specification in the CN commodity codes used for data-gathering by customs authorities is in marked contrast to the highly differentiated CN Codes provided by States for many other kinds of items, from military weapons to agricultural produce, allowing the exports and imports of specific kinds of weapons or other products to be tracked automatically.

This problem is to a large extent an international rather than a specifically European one, since CN codes are largely harmonised with the international HS customs code system. Nonetheless European efforts to promote elaboration of customs commodity codes for this kind of equipment at an international level would be of great value in tracking and controlling instruments used for torture and other ill-treatment.

## INVESTIGATION AND PROSECUTION

A further crucial element of effective enforcement is the ability and determination of the relevant authorities to investigate and, where appropriate, sanction companies or individuals found to be breaching export control legislation. However, despite indications of illicit trading in equipment widely utilised for torture and other ill-treatment, like that in Germany outlined above, no Member State has yet brought a case against a company or individual for infringement of EC Regulation 1236/2005.<sup>194</sup>

We recommend that Member States review the adequacy of financial, technological and human resources provided to ensure that customs and other government departments and agencies tasked with import and export controls can strictly enforce the Regulation. The review should consider, inter alia:

- pre-shipment preventative enforcement practices such as those contained in the Wassenaar Arrangement's 'Best Practices for Effective Export Enforcement';
- effective data handling and information exchange with other customs and enforcement authorities;

- physical inspection of exported, imported and in-transit goods using risk assessment techniques to aid selection;
- investigation of potential breaches reported by enforcement agencies, other Member States and non-governmental organisations; and
- imposing appropriate criminal penalties and administrative sanctions on companies and individuals contravening the Regulation.

# SUMMARY OF RECOMMENDATIONS

## TO MEMBER STATES

### **National implementation of EC Regulation 1236/2005**

All Member States must inform the European Commission of the relevant penalties they have introduced for breaches of EC Regulation 1236/2005, as they are obliged to do under Article 17 of the Regulation. If they have not introduced such penalties to date, they should provide the European Commission with details of how and when they will fulfil their Article 17 obligations.

In accordance with Article 16, the Committee on Common Rules for Exports of Products, with the assistance of the European Commission, should analyse the penalty regimes introduced by Member States in meeting their obligations under the Regulation. They should assess whether such regimes are “effective, proportionate and dissuasive”, in accordance with Article 17 of the Regulation.

Where such penalty rules have not been introduced or are insufficient, the Committee and the Commission should provide guidance and assistance to strengthen them.

### **Transparency and reporting**

All Member States which have not done so must compile public annual activity reports in accordance with their Article 13(3) obligations. They should send a copy of their reports to the European Commission and make them publicly available. These reports should at a minimum include: the number of applications received, the items involved and countries of destination for each application, as well as the decisions made on each of these applications. To ensure more effective public and parliamentary oversight and accountability, Member States should also provide details of the end users of the items concerned.

All Member States' annual activity reports, compiled in accordance with their Article 13(3) obligations, should be updated and form part of a formal Regulation review process undertaken by the Committee on Common Rules for Exports of Products, as empowered by Article 15 and 16 of the Regulation.

### **Promulgation and outreach**

All Member States should continue to take steps actively to disseminate details of the relevant legislation and other measures aimed at the effective implementation of the Regulation, and to ensure that all known relevant manufacturers and suppliers of security and policing equipment within their countries are fully aware of the new controls, their consequent obligations, and the penalties they will incur if they breach these controls..

To conduct outreach and awareness-raising work effectively, Member States should take active steps to identify companies or individuals involved in the manufacture, distribution, sale, brokering or advertising of items controlled by EC Regulation 1236/2005; and to inform these companies of their obligations stemming from the Regulation.

### **Enforcement**

Member States should review the adequacy of financial, technological and human resources provided to ensure that customs and other government departments and agencies tasked with import and export controls can strictly enforce EC Regulation 1236/2005. This review should consider, inter alia:

- pre-shipment preventative enforcement practices such as those contained in the Wassenaar Arrangement's 'Best Practices for Effective Export Enforcement';
- effective data handling and information exchange with other customs and enforcement authorities;



- physical inspection of exported, imported and in-transit goods using risk assessment techniques to aid selection;
- investigation of potential breaches reported by enforcement agencies, other Member States and non-governmental organisations; and
- imposing appropriate criminal penalties and administrative sanctions on companies and individuals contravening the Regulation.

### **Licensing decision-making**

All Member States must fulfil their obligations under Article 6 of the Regulation to refuse the authorisation of any export of an item listed in Annex III of the Regulation where there are “reasonable grounds” to believe that such equipment might be used for torture or other ill-treatment.<sup>195</sup>

In the process of making such export decisions as required under Article 6.2 of the Regulation, the competent authority must take into account available international court judgements, findings of the competent bodies of the UN, the Council of Europe and the EU, and reports of the Council of Europe’s Committee for the Prevention of Torture, and of the UN Special Rapporteur on Torture. Credible reports or other information prepared by civil society organisations should also be taken into account, as permitted under Article 6.2.

To prevent ‘undercutting’ of Member States’ licensing decisions by other Member States, and to ensure the consistency of the Regulation’s application throughout the EU, the Commission and the Committee should ensure that an established procedure is in place to share information between Member States and the EC regarding measures taken to implement the Regulation; and details of export authorisations granted or refused, either through the denial notification mechanism already established for military export denials, or through other effective procedures; as mandated in Article 13.2 of the Regulation. Information provided by Member States should at a minimum include: the type of decision taken for each licence application; the grounds for the decision or a summary thereof; the items included in the application; the names of the consignees and, if they are not the same, the end-users of the items concerned.

States should also provide information in their public, annual activity reports on the number of applications received, on the items and countries concerned, and on the decisions they have taken on these applications.

### **National measures**

The EC and Member States should amend the Regulation to add a provision to the effect that, notwithstanding the provisions in Articles 5 and 6, a Member State may:

- adopt or maintain a prohibition on the export and import of any other item which it considers to be at risk of being used for capital punishment, torture or other ill-treatment; and,
- adopt or maintain a requirement for licensing the export and import of any other item which it considers could be used for the purpose of capital punishment, torture or other ill-treatment.

Member States should adopt such controls as soon as possible.

### **Brokering controls**

Member States and the European Commission should control brokering activities by EU companies and individuals who wish to arrange the transfer of items listed in the Regulation between third countries.

Thus Member States and the Commission should:

- prohibit the brokering of transactions by any EU natural or legal person from any place involving international transfers, including sales and exports, of items with no practical use other than for capital punishment, torture or other ill-treatment, as included in Annex II; and
- introduce effective mechanisms to control the brokering of transactions involving transfers of any items listed in Annex

III. This should include instances where (i) the brokering activity is conducted by registered companies, nationals and permanent residents of Member States outside the EU, or (ii) where the items being brokered by a registered company, national or permanent resident of an Member State do not physically enter the EU.

#### **Intra-EU transfers**

All Member States should introduce without delay national import and export control mechanisms to control the intra-EU trade in leg irons and gang chains, as already explicitly permitted under Article 7.1 of Regulation.

The European Commission and Member States should amend the Regulation to require importers of any item listed in Annex III to first obtain an import authorisation on a case by case basis, and that such authorisations should be rigorously assessed to determine whether there is a substantial risk that the items will be used for torture or other ill-treatment, either in the EU, or once further traded outside the EU.

## **TO THE EUROPEAN COMMISSION AND THE COMMITTEE ON COMMON RULES FOR EXPORTS OF PRODUCTS**

The European Commission and the Committee on Common Rules for Exports of Products should consider the issues regarding both implementation and content of the Regulation raised in this report; and produce a clear timetable for a formal review of the Regulation's operation.

The Commission and the Committee should also establish a timetable for future implementation review meetings.

#### **Monitoring National Implementation of EC Regulation 1236/2005**

In accordance with Article 16, the Committee, with the assistance of the European Commission, should analyse the appropriateness and effectiveness of the penalty rules introduced by Member States in meeting their obligations under the Regulation.

Where such rules have not been introduced or are insufficient, the Committee and the Commission should give guidance and assistance to strengthen them. They should seek to ensure that such regimes are "effective, proportionate and dissuasive", in accordance with Article 17 of the Regulation.

#### **Transparency and reporting**

All Member States' annual activity reports, compiled in accordance with their Article 13(3) obligations, should be updated and form part of a formal Regulation review process undertaken by the Committee on Common Rules for Exports of Products, as empowered by Article 15 and 16 of the Regulation.

To facilitate the compilation of annual activity reports by all Member States and to ensure their consistency, the European Commission should develop a model framework report.

The Commission should also take a more proactive role in the reporting process: for example, by writing to all Member States to remind them of their obligations to publish annual activity reports; and offering advice and assistance in the production of their reports. The Commission should also consider publishing all annual reports on a dedicated website so that parliaments and the public can exercise a reasonable degree of oversight.

#### **Information Sharing**

The Commission and the Committee should ensure that a procedure is established to share information between Member States and the Commission regarding measures taken to implement the Regulation, including export authorisations granted or refused, either through the denial notification mechanism already established for military export denials, or through other effective procedures, in order to implement Article 13.2 of the Regulation.

**Import of Annex II Items**

The Commission (and if appropriate, the Committee) should establish whether and when any electric-shock stun belts or related parts, technical assistance or training have been transferred to Hungary. The European Commission (and if appropriate, the Committee), should as a matter of urgency investigate whether Hungary has breached the Regulation or other European anti-torture regulations with regard to the import or use of electric-shock stun belts, or of training, assistance or components for such belts.

**Equipment which should be added to Annex II (equipment prohibited for import or export)**

## (a) Spiked batons:

Spiked batons should be added to Annex II of the Regulation, and that their import and export be prohibited to prevent their international trade from contributing to torture and other ill-treatment.

## (b) Fixed wall and floor restraints:

Wall or floor restraints specifically designed for restraining humans should be added to Annex II of the Regulation and their import and export prohibited, to prevent their international trade from contributing to torture and other ill-treatment. Dual-use restraints that are designed and marketed for other use, such as medical use, would not come under this provision. However, specific exports of such dual-use equipment could be prohibited under the proposed "end-use catch all" clause (see below) if Member States deemed there was a risk of such items being misused by their proposed or likely end-user for torture or ill-treatment.

## (c) Leg irons, chains and shackles:

Fixed leg irons and bar fetters for security and law enforcement purposes – as well as leg restraints purposely designed to cause discomfort, such as weighted leg cuffs - should be reclassified under the Regulation from the list of controlled items (Annex III) to the list of prohibited items (Annex II) to prevent their international trade from contributing to torture and other ill-treatment.

## (d) Thumb-cuffs, finger-cuffs and thumbscrews:

All types of "thumb-cuffs" and "thumbscrews" should be reclassified in the Regulation from the list of controlled items (Annex III) to the list of prohibited items (Annex II). In addition "finger-cuffs" should be added to the list of prohibited items, to prevent their international trade from contributing to torture and other ill-treatment.

## (e) 'Stun cuffs' and other body-worn electric-shock stun devices:

The existing prohibition in the Regulation on electric-shock 'stun belts' should be extended to cover 'stun cuffs' and any other electric-shock stun devices designed for attachment to the body of a prisoner or detainee. Furthermore, given the concerns about the 10,000 volt exemption in the Regulation, this prohibition should cover all electric-shock stun restraint devices regardless of the levels of voltage and power used. All such items should be included in the list of prohibited items (Annex II).

**Equipment and technical assistance that should be added to Annex III (controlled for export)**

## (a) Handcuffs:

The Regulation should be amended to include handcuffs in Annex III (the list of controlled items), to prevent their international trade from contributing to torture and other ill-treatment.

The Regulation should incorporate a definition of "ordinary handcuffs" based upon internal perimeter of the cuffs rather than on chain length, in order to prevent evasions of trade controls on leg cuffs which can contribute to torture and other ill-treatment.

## (b) Batons and other hand-held impact devices:

Hand-held impact devices or striking devices designed for law enforcement or security use should be added to Annex III (the list of controlled items), to prevent their international trade from contributing to torture and other ill-treatment.

(c) Portable electric-shock devices below 10,000 volts:

The 10,000 volt exemption should be removed from the Regulation to ensure that all electric-shock stun weapons designed for law enforcement and security use are covered by the Regulation's list of controlled items (Annex III).

#### **Scope of equipment controls**

(a) Components and accessories:

To prevent evasions of the Regulation, Articles 3, 4 and 5 of the Regulation should be applied to specially designed components and accessories for items listed in Annex II and III of the Regulation.

(b) Technical assistance and training:

The Regulation should be amended to require Member States to introduce controls on the international provision of training and technical assistance for Annex III equipment, and that such training and technical assistance should not be authorised if it involves the transfer of skills, knowledge or techniques likely to lend themselves to capital punishment, torture and other ill-treatment.

#### **Limitations of list-based controls: a 'torture end-use catch-all' clause**

We welcome initiatives to incorporate a 'torture end-use catch all' clause in the Regulation. The European Commission and Member States should adopt a control of this kind, which would allow, on the basis of prior information, Member States to license and thus refuse the export of any items which are at substantial risk of being used for capital punishment, torture or other ill-treatment by its destined end-users.

In the absence of such a clause being introduced into the Regulation, the Regulation should be amended to add a provision to the effect that, notwithstanding the provisions in Articles 5 and 6, a Member State may unilaterally:

- adopt or maintain a prohibition on the export and import of any other item which it considers to be at substantial risk of being used for capital punishment, torture or other ill-treatment; and
- adopt or maintain a requirement for licensing the export and import of any other item which it considers could be used for the purpose of capital punishment, torture or other ill-treatment.

Member States should adopt such controls at national level as soon as possible.

### **Brokering controls**

Member States and the European Commission should control brokering activities by companies and individuals within the EU who wish to arrange the transfer of items listed in the Regulation between third countries.

Thus Member States and the Commission should:

- prohibit the brokering of transactions by any natural or legal person within the EU involving international transfers from any place, including sales and exports, of items with no practical use other than for capital punishment, torture or other ill-treatment, included in Annex II of the Regulation;
- introduce effective mechanisms to control the brokering of transactions involving transfers of any items listed in Annex III.

Such controls should include instances where (i) the brokering activity is conducted outside the EU by registered companies, nationals and permanent residents of Member States, or (ii) where the items are being brokered by a legal or natural person within the EU, but the items do not physically enter the EU.

### **Intra-EU transfers**

The European Commission and Member States should amend the Regulation to require importers of items listed in Annex III to obtain an import authorisation on a case-by-case basis to as to rigorously assess whether there is a substantial risk that the items will be used for torture or other ill-treatment either in the EU or once further traded outside the EU.

### **Licensing exemption for transit through the EU**

The Regulation should be amended to remove the exemption for the transit of items falling under Annex III of the Regulation, and a provision inserted to require specific transit authorisation for all items listed in Annex III; and also to explicitly prohibit the transit of all equipment listed in Annex II of the Regulation.

# APPENDIX ONE: NATIONAL PENALTY LEGISLATION INTRODUCED BY MEMBER STATES

TABLE 3: MEMBER STATES THAT INTRODUCED PENALTY LEGISLATION BEFORE THE 29<sup>TH</sup> AUGUST 2006 DEADLINE

Country	Date legislation passed	Penalty legislation
<b>Austria</b>	June 2005	AuBHG 2005 erlassen und das Kriegsmaterialgesetz geandert wird, NR: GP XXII RV 798 AB 923 S. 110.BR: AB 7285 S, 722
<b>Denmark</b>	July 2006	Lov 2006-06-07 nr. 503 om ændring af våbenloven, straffeloven og krigsmaterielloven
<b>Germany</b>	July 2006	33 (4) (1), 34 (2), 34 (6) of the Foreign Trade and Payments Act; and 70 (5q) of the Regulation implementing the Foreign Trade and Payments Act, entering into force on 30 <sup>th</sup> July 2006
<b>Greece</b>	July 2006	Ministerial Decision No. 146845/E3/26845/4-8-06 (entered into force 30 <sup>th</sup> July 2006)
<b>Ireland</b>	July 2006	Amendment to the Control of Exports Order, 2005, S.I. No. 884 of 2005, PRN.A5/2279
<b>Lithuania</b>	March 2006	Order No. 5-V-203 "On the Confirmation of the Rules on the Granting, Suspending and Refusing Authorisations for Export, Import Goods, which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment and Authorisations for the Supply of related technical assistance".  29 <sup>th</sup> March 2006 Order confirmed by Police Commissioner General of Lithuania
<b>Luxembourg</b>	August 2006	Reglement grand-ducal du 25 aout 2006 soumettant a licence l'importation et l'exportation de certains biens susceptibles d'etre utilises en vue d'infliger la peine capitale, la torture ou d'autres peines ou traitements cruels, inhumains ou degradants.
<b>Malta</b>	August 2006	ATT DWAR POTERI LI JSIRU REGOLAMENTI FL-INTERESS NAZZJONALI (KAP. 365)  Regolamenti ta' l-2006 dwar il-Kontroll ta' l-Importazzjoni u Esportazzjoni ta' Oggetti li jistghu jintuzaw ghall-Piena Kapitali,  Tortura jew Trattament jew Kastig iehor Krudili, Inuman jew Degradanti, A.L. 167 ta' l-2006  (Suppliment tal-Gazzetta tal-Gvern ta' Malta, Nru. 17,950, 4 ta' Awissu, 2006)

Country	Date legislation passed	Penalty legislation
<b>Poland</b>	June 2006	Law on administration of services and commodity circulation with foreign countries (10 <sup>th</sup> March 2006);  Regulation of the Minister of the Economy on export and import authorisations for certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (7 <sup>th</sup> June 2006);  Regulation of the Minister of the Economy on authorisations for the supply or the acceptance of technical assistance related to goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (7 <sup>th</sup> June 2006).
<b>Slovenia</b>	June 2006	National legislation adopted May 2006 and entering into force 30 <sup>th</sup> June 2006 ( <a href="http://www.mg.gov.si/si/zakonodaja_in_dokumenti/ekonomski_odnosi_s_tujino/veljavni_predpisi/">www.mg.gov.si/si/zakonodaja_in_dokumenti/ekonomski_odnosi_s_tujino/veljavni_predpisi/</a> )
<b>Spain</b>	July 2006	13373, Resolucion de 20 de julio de 2006, de la Secretaria de Estado de Turismo Y Comercio, por la que se establece el procedimiento de tramitacion de las autorizaciones de comercio exterior en aplicacion del Reglamento (CE) No 1236/2005 del Consejo, de 27 de junio de 2005, sobre el comercio de determinados productos que pueden utilizarse para aplicar la pena de muerte o infligir tortura u otros tratos o penas crueles, inhumanas o degradantes.  (published 25 <sup>th</sup> July 2006)
<b>UK</b>	July 2006	The Export Control (Security and Paramilitary Goods) Order 2006 (S.I.2006/1696)  Technical Assistance Control Regulations 2006 (S.I.2006/1719)  The Export Control (Amendment) Order 2006 (S.I. 2006/2271)

TABLE 4: PENALTY LEGISLATION INTRODUCED AFTER THE 29<sup>TH</sup> AUGUST 2006 DEADLINE

Country	Legislation passed	Penalty legislation
<b>Belgium</b>	May 2007	Ministerial Decree [C- 2006/11573], 26 Avril 2007 – Arrete ministeriel soumettant a licence l'importation et l'exportation des marchandises susceptibles d'etre utilisees en vue d'infliger la peine capitale, la torture ou d'autres peines ou traitements cruels, inhumains ou degradants.  <i>(Published in Moniteur Belge, 11<sup>th</sup> May 2007, p 25853-25859. Decree has retro-active effect from 30<sup>th</sup> July 2006).</i>
<b>Bulgaria</b>	February 2008	Act on enforcement of 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
<b>Cyprus</b>	November 2007	Cyprus Law N145(1)/2007, published in Official Gazette on 2 <sup>nd</sup> November 2007

Country	Legislation passed	Penalty legislation
<b>Czech Rep</b>	January 2008	Act No. 38/2008 on the export and import of goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, on the supply of related technical assistance, and amending Act No 634/2004 on administrative fees, as amended (entered into force on 1 <sup>st</sup> April 2008)
<b>Hungary</b>	2007	<p>Az egyes, a halálbüntetés, a kínzás vagy más kegyetlen, embertelen vagy megalázó bánásmód vagy büntetés során alkalmazható áruk kereskedelméről szóló, 2005. június 27-i 1236/2005/EK tanácsi rendelet végrehajtására alkotott magyar jogszabályok:</p> <ul style="list-style-type: none"> <li>• 2007. évi XXVII. Törvény a Büntető Törvénykönyvről szóló 1978. évi IV. törvény és más büntetőjogi tárgyú törvények módosításáról;</li> <li>• 26/2007. (II. 28.) Korm. rendelet haditechnikai eszközök és szolgáltatások kivitelének, behozatalának, transzferjének és tranzitjának engedélyezéséről szóló 16/2004. (II. 6.) Korm. rendelet módosításáról</li> </ul> <p>25/2007. (II. 28.) Korm. rendelet a közbiztonságra különösen veszélyes eszközökről szóló 175/2003. (X. 28.) Korm. rendelet módosításáról</p>
<b>Italy</b>	February 2007	Decreto Legislativo 12 gennaio 2007, n. 11, published on 16 <sup>th</sup> February 2007
<b>Netherlands</b>	October 2006	Regeling van de Staatssecretaris van Economische Zaken van 20 oktober 2006, nr.WJZ 6082607, inzake de in- en uitvoer van goederen, houdende uitvoering van verordening (EG) nr.1236/2005 en van verordening (EG) nr.953/2003
<b>Slovak Republic</b>	September 2007	o obchodovaní s tovarom, ktorý možno použiť na vykonanie trestu smrti, mučenie alebo iné kruté, neludské alebo ponižujúce zaobchádzanie alebo trestanie <sup>474</sup> , ZÁKON, z 19. septembra 2007, Za obsah týchto stránok zodpovedá výhradne IURA EDITION, spol. s r. o.

TABLE 5: MEMBER STATE IMPLEMENTATION THROUGH RECOURSE TO EXISTING LAWS

Country	Legislation passed	Relevant existing legislation
<b>Estonia</b>	Covered by existing Estonia Strategic Goods Act	Estonia Strategic Goods Import, Export and Transit Act June 1999
<b>Finland</b>	Covered by existing Finnish laws on smuggling & breaches of EU legislation	Penal Code of Finland (39/1889; amendments up to 650/2003 included)



Country	Legislation passed	Relevant existing legislation
<b>France</b>	Covered by Common Law of Customs Sanctions	Article 38 of the Customs Code makes illegal import or exports of prohibited goods including those covered by EC Regulation 1236/2005. Articles 414 and 417-428 of the Customs Code define the penal regime
<b>Latvia</b>	Covered by existing law	Violation of implementation of Customs Rules Provisions of the Latvian Administrative Code, Article 201, 10  Latvian Administrative Violations Code (Article 201, 12: Smuggling)  Latvian Criminal Law (Article 190: Smuggling)
<b>Sweden</b>	Part of Regulation was covered by existing law and remaining articles to be covered through the introduction of new legislation.	Articles 3.1 and 5.1 of the Regulation are covered by the existing smuggling law (2000:1225) (Förslag till lag om ändring i lagen (2000:1225) om straff för smuggling)  The existing law only covered smuggling of goods and not supply of technical assistance. The Swedish parliament adopted a special "implementing law" on 7 <sup>th</sup> December 2006, which entered into force on 1 <sup>st</sup> January 2007.

# ENDNOTES

---

1 Hereafter 'the Regulation' refers to EC Regulation 1236/2005

2 Index: POL 34/001/2007

3 Hereafter "torture and other ill- treatment" is used to denote torture and other cruel, inhuman and degrading treatment and punishment.

4 This prohibition has been articulated in a number of international human rights and regional instruments, most notably the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (adopted by General Assembly resolution 39/46 of 10 December 1984, entered in to force 26 June 1987).

5 Universal Declaration of Human Rights, adopted and proclaimed by General Assembly resolution 217 A (III), 10th December 1948

6 Article 7, International Covenant on Civil and Political Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI), 16 December 1966, entered into force 23 March 1976

7 European Convention for the Protection of Human Rights and Fundamental Freedoms. Adopted by the Council of Europe on 4 November 1950, entered into force 3 September 1953

8 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Adopted by General Assembly resolution 39/46 of 10 December 1984, entered in to force 26 June 1987

9 Report of the Special Rapporteur on the question of torture, Theo Van Boven, Commission on Human Rights, UN Doc. E/CN.4/2005/62, 15th December 2004, para. 14.

10 Ibid. paras 14 and 37

11 UN General Assembly, Resolution on torture and other cruel, inhuman or degrading treatment or punishment (A/RES/64/153), 18 December 2009

12 Resolution of the European Parliament adopted 3 October 2001, cited in EC Regulation 1236/2005 of 27 June 2005

13 Commission of the European Communities, Proposal for Council Regulation (COM (2002) 770) to control, and in some cases prohibit, equipment that has been used for torture and other cruel, inhuman or degrading treatment or punishment

14 EC Regulation 1236/2005 of 27th June 2005 concerning trade in goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment, published in Official Journal of the European Union, L200/1, 30th July 2005 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:200:0001:0019:EN:PDF>).

15 EC Regulation 1236/2005, Article 3 and Article 4.

16 EC Regulation 1236/2005, Article 5.

17 Council of the European Union, *Guidelines to EU policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment – An update of the Guidelines* (PESC 450, COHOM 41, 18th April 2008) ([http://www.consilium.europa.eu/applications/HumanRights/docs.asp?cmsid=943&lang=EN&command=show\\_subdocs&id=108](http://www.consilium.europa.eu/applications/HumanRights/docs.asp?cmsid=943&lang=EN&command=show_subdocs&id=108))

18 As quoted in European Council General Secretariat, *Implementation of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment – stock taking and new implementation measures*, 8407/1/08 REV 1 18 April 2008, ([www.consilium.europa.eu/ueDocs/cms\\_Data/docs/hr/news129.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news129.pdf))

19 Discussions between Amnesty International, Omega Research Foundation and US trade control official, April 2008; correspondence from Director General Bureau of Foreign Trade of Taiwan to Amnesty International, 5 April 2004

20 The proposed US changes include the introduction of controls on "equipment designed for the execution of human beings", and the classification of "spiked batons" and "shock sleeves" as instruments explicitly "designed for torture", and thus subject to a presumption of export licence denial. US Department of Commerce (Bureau of Industry and Security), *Revisions to the Commerce Control List to Update and Clarify Crime Control License Requirements*, published in US Federal Register, Vol.74, No.153, 11th August 2009 ([http://www.gpo.gov/bis/fedreg/ear\\_fedreg.html#74fr40117](http://www.gpo.gov/bis/fedreg/ear_fedreg.html#74fr40117), accessed 20 January 2010)

21 Report of the Special Rapporteur on the question of torture ( E/CN.4/2005/62), 15 December 2004, para. 36.

22 Amnesty International, *European Union: Stopping the Trade in Tools of Torture* (Index: POL 34/001/2007)

23 European Council General Secretariat, *Implementation of the EU Guidelines on torture and other cruel, inhuman or degrading treatment or punishment – stock taking and new implementation measures*, 8407/1/08 REV 1 18 April 2008, ([www.consilium.europa.eu/ueDocs/cms\\_Data/docs/hr/news129.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/hr/news129.pdf)) accessed 20 January 2010

24 Ibid, pp. 8, 13

25 It should be noted that this analysis is only possible because the six named Member States prepared public annual activity reports in fulfilment of their obligations under the Regulation, or provided Amnesty International and Omega with information on their licensing decisions. It has not been possible to determine whether other Member States have issued licences of similar concern.

26 UK Department for Business, Innovation and Skills, *Strategic Export Controls Quarterly Report July-September 2007*, p.126

27 Correspondence with German Embassy official, London, 17th April 2008 and 19th January 2009; 'Czech Republic export/import controls – scope and implementation', Presentation by official of Licensing Office, Ministry of Industry and Trade, Czech Republic, 24th April 2008 and correspondence received from Official of the licensing Office, 4th September 2009. It should be noted that the information provided was solely for licence authorisations. This does not necessarily indicate that the goods named have yet been exported.

28 Pelargonic Acid Vanillylamide (synthetic 'pepper spray' substitute)

29 In addition to the export licences detailed in Table 1 above, between July 2006 and July 2007 Germany licensed the export of foot-chains and leg cuffs [Fussfesseln, Fussketten] to Austria, the UN Forces in Kosovo: see Activity Reports, 30th July 2006-30th July 2007

30 'Czech Republic export/import controls – scope and implementation', Presentation by official of Licensing Office, Ministry of Industry and Trade, Czech Republic, 24th April 2008 and correspondence received from Official of the licensing Office, 4th September 2009

31 Article 6.2 of EC Regulation 1236/2005 stipulates that "[t]he competent authority shall not grant any authorisation when there are reasonable grounds to believe that goods listed in Annex III might be used for torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment, by a law enforcement authority or any natural or legal person in a third country."

32 Member States currently notify other Member States bilaterally of denials of military export licences through the EU's electronic 'coreu' system, and also submit national lists of denials on a regular basis to a central electronic EU database of denials, managed by the EU Council Secretariat and viewable by all Member State governments. See EU Council, *Tenth Annual Report according to Operative Provision 8 of the European Code of Conduct on Arms Exports* (2008 / C 300 / 01), p.1 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:300:0001:0374:EN:PDF>)

33 See for example details of the Secpro XR 5001 Prisoners stun belt, which its distributor claims is "used by many institutions in the USA and world wide" and has been "tested by and [is] in use with South African Authorities"

([www.securityprousa.com/prstbeshbeco.html](http://www.securityprousa.com/prstbeshbeco.html) , accessed 20 January 2010)

34 Amnesty International, *Stopping the torture trade* (Index: 40/02/2001)

35 Amnesty International, *The Pain Merchants: Security Equipment and its use in torture and ill-treatment* (Index: ACT 40/008/2003)

36 Council of Europe Committee for the Prevention of Torture, *Visit Report: Hungary (2005)* (CPT/Inf (2006) 20), para.127: "The delegation was informed of plans to introduce electric stun batons and body belts at all prisons (as well as police establishments) by the end of 2005. The equipment had apparently already been delivered to prisons but staff had not yet been trained in its use. The intention is to use this equipment (instead of conventional body belts) during transfers of prisoners. It should be noted that the batons and belts in question can produce an electric shock impulse of 50,000 volts; further, the belts have handcuffs and forearm restraints fitted so that the prisoner can not move his arms at all.

"In the CPT's view, electric stun batons and body belts constitute a potentially dangerous and inhumane means of treating detained persons (in addition to the possibility of them being misused). The Committee would like to received detailed information on the Hungarian authorities' plans to introduce electric stun batons and body belts in prisons and police establishments and, in particular, on the training provided to staff, the concrete circumstances in which the use of this equipment is envisaged, and any instructions which have been issued in this respect."

37 "The use of electric batons was introduced in September, 2003.....Since its introduction, it has not been used at all; the prison staffs have always been able to stop disorders by applying alternative measures." Council of Europe Committee for the Prevention of Torture, *Response of the Hungarian Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Hungary from 30 March to 8 April 2005* (CPT/Inf (2006) 21). Omega wrote to the Hungarian Prison Service on 5 September 2008, requesting further information regarding the deployment of electric body belts, but has not received any response.

38 Telephone call and letter to Hungarian Prison Service, 5 September 2008

39 EC Regulation 1236/2005, Article 3(1)

40 EC Regulation 1236/2005, Article 4

41 Article 17 of EC Regulation 1236/2005 provides, among other things, that "Member States shall lay down the rules on penalties applicable to infringements of the provisions and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive."

42 Ibid.

43 Correspondence sent to Portuguese Ministério das Finanças, 31st March 2008 and 15th April 2008; correspondence sent to Romanian Ministerul Economiei și Comerțului, 10th July 2008; Omega Research Foundation interview with EC Commission official, 12 November 2008

44 EC Regulation 1236/2005, Article 13

45 [www.exportcontrol.bg/Modulbg.php?id=1784](http://www.exportcontrol.bg/Modulbg.php?id=1784) (spravka\_1236\_do\_EU\_Komisiata\_2007\_2008.pdf) (accessed 20 January 2010)

46 [www.mpo.cz/dokument54368.html](http://www.mpo.cz/dokument54368.html) (accessed 20 January 2010)

47 [www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/arbeitshilfen/sonstiges/index.html](http://www.ausfuhrkontrolle.info/ausfuhrkontrolle/de/arbeitshilfen/sonstiges/index.html) (zweiter\_taetigkeitsbericht.pdf) (accessed 20 January 2010)

48 Letter from Ministry of Interior, Republic of Lithuania, 7 May 2008, containing information published in Official Gazette (Lithuania),

No. 32(1), 2008

49 [www.mg.gov.si/fileadmin/mg.gov.si/pageuploads/DEOT/LETNO\\_POROCILO\\_06\\_07.doc](http://www.mg.gov.si/fileadmin/mg.gov.si/pageuploads/DEOT/LETNO_POROCILO_06_07.doc) ;

[www.mg.gov.si/fileadmin/mg.gov.si/pageuploads/DEOT/LETNO\\_POROCILO\\_07\\_08.doc](http://www.mg.gov.si/fileadmin/mg.gov.si/pageuploads/DEOT/LETNO_POROCILO_07_08.doc) (both accessed 20 January 2010)

50 In response to a request for information regarding authorisations under EC Regulation 1236/2005, the Government of Spain provided Omega with a copy of the *Spanish Export Statistics Regarding Defence Material, Other Material and Dual Use Items and Technologies* covering 2006 and 2007. Although there is information on implementation of the Regulation, specific information on all relevant licences granted and refused is not included. Spain subsequently informed Omega that they submitted their annual activity report to the European Commission on 17 September 2008 and have provided details of an additional licence not included in the original annual activity report.

51 UK Foreign and Commonwealth Office, *Strategic Export Controls Quarterly Reports* (various, 2006-8) ([www.fco.gov.uk/en/about-the-fco/publications/publications/annual-reports/export-controls1](http://www.fco.gov.uk/en/about-the-fco/publications/publications/annual-reports/export-controls1))

52 In response to a request for information regarding authorisations under EC Regulation 1236/2005, Estonian officials provided Omega with a weblink to their annual export report. However, this document includes no details of goods regulated under EC Regulation 1236/2005.

53 Correspondence from Latvian Ministry of Economics, 19 October 2007 and 24 April 2008.

54 Correspondence from the Dutch Ministry of the Economy, 2 July 2008

55 Email Correspondence from Department de Commerce Extérieur, Luxembourg, 17 January 2008

56 UN Code of Conduct for Law Enforcement Officials, adopted by General Assembly resolution 34/169 of 17 December 1979

57 The term "sting stick" has been used by the UK government in describing these items. For example, see website of Department for Business, Innovation and Skills, 'Sting Sticks – FAQs' ([www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/licensing-policy/ecofaqs/page45462.html#q1](http://www.berr.gov.uk/whatwedo/europeandtrade/strategic-export-control/licensing-policy/ecofaqs/page45462.html#q1), accessed 20 January 2010)

58 Companies offering spiked batons at the China Police 2006 exhibition, held in Beijing in May 2006, included Chengdu Jin'An Equipment Co., Ltd and Jiangsu Wuwei Police Equipment Factory, according to information obtained from company brochures on file with Omega Research Foundation. See also, for example, goods offered at [www.rubberimpex.com/RubberParts/JSJG02.htm#AntiRiot](http://www.rubberimpex.com/RubberParts/JSJG02.htm#AntiRiot) (accessed 20 January 2010)

59 Asian Human Rights Commission, *Urgent Appeals Program, FA-17-2003: Torture: Cases of State Atrocities; Intervention Against Political Rights*, 6 June 2003 ([www.ahrchk.net/ua/mainfile.php/2003/461/](http://www.ahrchk.net/ua/mainfile.php/2003/461/) accessed 20 January 2010); photograph obtained by L'association France Tibet (no date)

60 Asian Human Rights Commission, *Urgent Appeals Program, FA-17-2003: Torture: Cases of State Atrocities; Intervention Against Political Rights*, 6th June 2003 ([www.ahrchk.net/ua/mainfile.php/2003/461/](http://www.ahrchk.net/ua/mainfile.php/2003/461/) accessed 20 January 2010)

61 Interview with Chinese policing equipment trader, China Public Security Expo 2007 exhibition, November 2007

62 Export Control (Security and Para-military Goods) Order 2008, S.I.2008 No. 639 ([www.opsi.gov.uk/si/si2008/uksi\\_20080639\\_en\\_1](http://www.opsi.gov.uk/si/si2008/uksi_20080639_en_1) accessed 20 January 2010)

63 US Department of Commerce (Bureau of Industry and Security), *Revisions to the Commerce Control List to Update and Clarify Crime Control License Requirements*, published in US Federal Register, Vol.74, No.153, 11th August 2009 ([www.gpo.gov/bis/fedreg/ear\\_fedreg.html#74fr40117](http://www.gpo.gov/bis/fedreg/ear_fedreg.html#74fr40117), accessed 20 January 2010)

64 UK Department for Business Enterprise and Regulatory Reform, *Review of Export Control Legislation (2007), Government's Further Response to the Public Consultation*, 21st July 2008

65 Council of Europe Committee for the Prevention of Torture (CPT), *Visit Report: The former Yugoslav Republic of Macedonia (2006)*, (CPT/Inf (2008) 5), para 50. Following its 2008 visit, the CPT stated: "As to the use of means of restraint in prison, and particularly as concerns the remand section of Skopje Prison, the delegation confirmed that chains were no longer used. However, inmates continue on occasion to be restrained for prolonged periods attached to their beds by ankle and hand cuffs in the presence of other inmates, and with no supervision and an inadequate recording system" (Council of Europe Committee for the Prevention of Torture (CPT), *Visit Report: The former Yugoslav Republic of Macedonia (2008)*, (CPT/Inf (2008) 31), para 15.

66 Council of Europe Committee for the Prevention of Torture, *Visit Report: Czech Republic (2006)*, (CPT/Inf (2007) 32), para 13

67 Council of Europe Committee for the Prevention of Torture, *Visit Report: Netherlands (2007)*, (CPT/Inf (2008) 2), para 13. In its response, the government of the Netherlands stated that: "Complying with the CPT recommendation, the Aruba Police Force has removed the ring on the wall in the Noord Police Station – the only one – and the use of this room as a temporary holding cell has been made impossible." Council of Europe Committee for the Prevention of Torture, *Response of the Authorities of the Kingdom of the Netherlands*, (CPT/Inf (2009) 7), 4 February 2009, para. 37.

68 Council of Europe Committee for the Prevention of Torture, *Visit Report: Czech Republic (2006)*, (CPT/Inf (2007) 32), para 13

69 Amnesty International, *United States of America: Below the radar: Secret flights to torture and 'disappearance'* (Index: AMR 51/051/2006)

70 Omega Research Foundation database

71 Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolution 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977. Emphasis added.

72 Recommendation of the Committee of Ministers to Member States on the European Prison Rules, adopted by Committee of Ministers on 11th January 2006 at 952nd meeting of the Ministers' Deputies

73 Amnesty International, *China: Detained and Imprisoned Labour Rights Activists* (Index: ASA 17/014/2002)

74 Amnesty International, *Zimbabwe: Political violence intensifies ahead of September local elections* (Index: AFR 46/039/2002); Amnesty International, *USA: Rights for All: Not Part of My Sentence: Violations of the Human Rights of Women in Custody* (Index: AMR 51/001/1999)

75 Amnesty International, *USA: Rights for All: Not Part of My Sentence: Violations of the Human Rights of Women in Custody* (Index: AMR 51/001/1999)

76 Joel Campagna, 'The Enemy?', published by Committee to Protect Journalists, 3 October 2006 ([www.cpj.org/Briefings/2006/DA\\_fall\\_06/prisoner/prisoner.html](http://www.cpj.org/Briefings/2006/DA_fall_06/prisoner/prisoner.html) accessed 20 January 2010)

77 BBC Panorama, interviews with Sayed Abasin and Alif Khan in transcript of *Inside Guantanamo* TV documentary, broadcast on BBC 1 TV (UK), 5 October 2003 (<http://news.bbc.co.uk/1/shared/spl/hi/programmes/panorama/transcripts/insideGuantanamo.txt> accessed 20 January 2010)

78 Amnesty International, *USA: Detainees continue to bear costs of delay and lack of remedy* (Index: AMR 51/050/2009)

79 ICRC report on the treatment of fourteen 'high value detainees' in CIA custody, February 2007

---

80 U.N. Commission on Human Rights, Report of the Special Rapporteur on torture and cruel, inhuman or degrading treatment or punishment, Visit by the Special Rapporteur to Pakistan, U.N. Doc. E/CN.4/1997/7/Add.2 (1996)(Nigel Rodley, Special Rapporteur), 15th October 1996, para. 104

81 For example, several East Asian law enforcement equipment manufacturers produce heavy roughly-cast leg cuffs with weights of up to 5kg attached to their chains (Omega Research Foundation database)

82 Under the Export Control Act 2002, the UK banned the export of a list of "security and para-military police goods," categorised as PL5001 (c) and (g) on the UK Military List, including gang chains and leg irons. Since 1997, it has been UK government policy not to issue export licences for this equipment, on the grounds that they are widely used for torture. In addition, the Trade in Goods (Control) Order 2003 categorises this equipment as "restricted goods," thus requiring UK individuals or companies (or foreign nationals acting within the UK) to have a license to supply or deliver, or do anything to promote the supply or delivery of, this equipment. In Spain, the export of leg-cuffs ('grilletes para pies') and waist chains ('cadenas para cintura') has since 2001 been prohibited without the specific authorisation of a Royal Decree from the Spanish government, which has not to Amnesty International's knowledge been granted since then. See Ley 24/2001 of 27 December 2001, Disposición Adicional Duodécima ([http://noticias.juridicas.com/base\\_datos/Admin/I24-2001.t5.html#da12](http://noticias.juridicas.com/base_datos/Admin/I24-2001.t5.html#da12))

83 See, for example, the testimony of detained Tibetan monk Palden Gyatso in Teresa Watanabe, 'People of Divergent Faiths Battle Scourge of Religious Persecution', *Los Angeles Times*, 17 October 1998

84 Omega Research Foundation database

85 Omega Research Foundation database

86 EC Regulation 1236/2005, Annex III; cf. European Parliament, *Resolution on the Council's Second Annual Report according to Operative Provision 8 of the European Union Code of Conduct on Arms Exports* (13177/1/2000 - C5-0111/2001 - 2001/2050(COS)), 3 October 2001

87 Chapter XXIII, Annex to Government Decree 'On the Licensing of the Export, Import, Transfer and Transit of Military Equipment and Technical Assistance' 16/2004 (II.6)

88 UK Department of Business, Enterprise and Regulatory Reform, *UK Export Control Act 2002: 2007 Review of Export Control Legislation* (June 2007), p. 41.

89 US Federal Register Vol. 72, No. 43 (6 March 2007)

90 Hungarian Government decree 16/2004 (II.6) 'On the licensing of the Export, Import, Transfer and Transit of Military Equipment and Technical Assistance'

91 [www.merriam-webster.com/dictionary/thumbcrew](http://www.merriam-webster.com/dictionary/thumbcrew)

92 UK Department of Business, Enterprise and Regulatory Reform, *UK Export Control Act 2002: 2007 Review of Export Control Legislation* (June 2007); US Federal Register Vol. 72, No. 43 (6 March 2007); Correspondence from Estonian government, March 2004

93 UN Standard Minimum Rules for the Treatment of Prisoners, Article 34

94 UN Standard Minimum Rules for the Treatment of Prisoners, Article 33

95 Recommendation on the Committee of Ministers to Member States on the European Prison Rules, Adopted by Committee of Ministers on 11th January 2006 at 952nd meeting of the Ministers' Deputies

96 Amnesty International, *USA: Where is the accountability? Health concern as charges against Mohamed al-Qahtani dismissed* (Index:

---

AMR 51/042/2008)

97 Amnesty International, *Israel and the Occupied Territories: Briefing to the Committee against Torture, September 2008* (Index: MDE 15/040/2009), p. 7; Amnesty International, *Israel and the Occupied Territories: Briefing to the Committee against Torture, May 2002* (Index: MDE 15/075/2002)

98 Council of Europe Committee for the Prevention of Torture (CPT), *Visit Report: Albania (2006)*, (CPT/Inf (2007) 35), para 8

99 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Mission to Jordan (A/HRC/4/33/Add.3), 5 January 2007, para. 31

100 Amnesty International, *Nigeria: Prisoners' rights systematically flouted* (Index: AFR 44/001/2008); Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Mission to Nigeria (A/HRC/7/3/Add.4), 22 November 2007, Appendix 1, paras. 9, 24, 27, 74

101 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Mission to Paraguay (A/HRC/7/3/Add.3), 1 October 2007, paras. 45, 47

102 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Mission to Sri Lanka, (A/HRC/7/3/Add.6), 26 February 2008, para. 71; and Appendix 1, paras 6,10, 16, 26, 28, 29, 31, 68, 101

103 Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Mission to Togo (A/HRC/7/3/Add.5), 6 January 2008, para. 49; and Appendix 1, paras. 8, 42, 49

104 Council of Europe Committee for the Prevention of Torture (CPT), *Visit Report: Germany (2005)* (CPT/Inf (2007) 18), e.g. para 14

105 Council of Europe Committee for the Prevention of Torture (CPT), *Visit Report: Slovenia (2006)* (CPT/Inf (2008) 7), e.g. para 9

106 Council of Europe Committee for the Prevention of Torture (CPT), *Visit Report: Germany (2005)* (CPT/Inf (2007) 18), para 15

107 T C Chan, G M Vilke, T Neuman and J L Clausen, "Re-examination of Custody Restraint Position and Positional Asphyxia," *American Journal of Forensic Medicine and Pathology*, 1998, 19, pp. 201-5; Amnesty International, *USA: The restraint Chair: How many more deaths?* (Index: AMR 51/031/2002)

108 See, for example, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Addendum: Mission to Nigeria (A/HRC/7/3/Add.4), 22 November 2007, e.g. Appendix 1, para 9, 24, 27, 74, 120

109 Amnesty International, *Guinea: "The Soldiers were shooting everywhere." The security forces' response to peaceful demands for change* (Index: AFR 29/003/2007)

110 Amnesty International, *Mauritania: Torture at the heart of the state* (Index: AFR 38/009/2008)

111 Amnesty International, *Moldova: Police Torture and other Ill-Treatment: It's Still 'Just Normal' in Moldova* (Index: EUR 59/009/2009)

112 DJJ Muckart, ATO Abdul-Karrim, 'Pigment-induced nephropathy after sjambok injuries', *South African Journal of Surgery* Vol. 29 (1991), pp. 21-4; Douglas MG Bowley et al, 'Acute renal failure after punishment beatings', *Journal of the Royal Society of Medicine* Vol. 95 (June 2002), pp. 300-301. Muckart reported on a series of 42 sjambokked patients, of which 3 died. Bowley notes that sjamboks produce "extensive soft tissue injury which may not be apparent on initial assessment, since the skin is often intact....Sjambok injuries can be deceptive and aggressive treatment is required to prevent kidney failure".

113 'Cop sjamboks mom in street', *The Sowetan*, 18 September 2007



- 
- 114 For example: Weapons Galore.com (UK) website (<http://www.weaponsgalore.com/home/category/128.html> , accessed 21 January 2010)
- 115 Customs (Prohibited Exports) Amendment Regulations 2001 (No 1), 5 July 2001 (<http://frli.law.gov.au/s97.vts?action=View&VdkVgwKey=2001B00252&Collection=FRLI&ViewTemplate=frliview.hts> , accessed 21 January 2010)
- 116 US Federal Register, Vol. 74, No. 153 (Tuesday, August 11, 2009), Proposed Rules, p.40118. The BIS recommendations have still to receive final approval.
- 117 EC Regulation 1236/2005, Annex III, 1.2.
- 118 Amnesty International, *The Pain Merchants* (Index: ACT 40/008/2003)
- 119 'Shame of British firms who trade in torture: Revealed: How UK companies are exploiting legal loopholes to broker the export of deadly instruments to the Third World.', *The Observer (UK)*, 10 September 2000; 'Una empresa vasca exporta grilletes para presos que España no permite por vejatorios', *El País (Spain)*, 2 October 2000
- 120 Larrañaga y Elorza exhibited at the IWA Sporting and Hunting Show in Nuremberg in 2003, 2004, 2006 and 2008 (Omega Research Foundation database)
- 121 Correspondence from Larrañaga y Elorza, 9 December 2008
- 122 [www.centurion.com.ve/prodalcyon.htm#gril04](http://www.centurion.com.ve/prodalcyon.htm#gril04) (accessed 22 December 2009); correspondence from Larrañaga y Elorza, 9 December 2008
- 123 Leg Irons 5270 Nickel, advertised at [www.assegaitrading.co.za/handcuffs\\_leg\\_iron.htm](http://www.assegaitrading.co.za/handcuffs_leg_iron.htm) (accessed 11 January 2010); correspondence from Larrañaga y Elorza, 9 December 2008
- 124 Export of Goods, Transfer of Technology and Provision of Technical Assistance (Control) Order 2003, Schedule 1, PL5001. This entry defines leg cuffs as those with "Individual cuffs having an internal perimeter dimension exceeding 165mm when the ratchet is engaged at the last notch entering the locking mechanism and shackles made therewith."
- 125 EC Regulation 1236/2005, Annex III
- 126 An example of a high-voltage electric-shock stun device currently exempt from the Regulation's controls is the PRO-TEC Personal Protector, described by its distributors as having an operating voltage of 400V: see Security Services of America (SSA) website, [www.ssainvestigations.com/products/other7.html](http://www.ssainvestigations.com/products/other7.html) (accessed 21 January 2010)
- 127 EC Regulation 1236/2005, Annex II, 2.1
- 128 Amnesty International, *USA: Cruelty in control? the stun belt and other electroshock equipment in law enforcement* (Index: AMR 51/054/1999)
- 129 [www.stingersystems.com/band-it.aspx](http://www.stingersystems.com/band-it.aspx) (accessed 11 January 2010); Amnesty International, *USA: Use of electroshock stun belts* (Index: AMR 51/045/1996)
- 130 Stun Tech Inc R.E.A.C.T. Belt specifications (n.d.), on file with Omega Research Foundation; [www.stingersystems.com/band-it.aspx](http://www.stingersystems.com/band-it.aspx) (accessed 11 January 2010)
- 131 US Department of Commerce (Bureau of Industry and Security), Revisions to the Commerce Control List to Update and Clarify Crime Control License Requirements, published in US Federal Register, Vol.74, No.153, 11 August 2009 ([www.gpo.gov/bis/fedreg/ear\\_fedreg.html#74fr40117](http://www.gpo.gov/bis/fedreg/ear_fedreg.html#74fr40117), accessed 20 January 2010)

---

132 Since 2002 the Omega Research Foundation has found evidence of one French, one German, two Spanish and one Italian company promoting high-voltage electric-shock stun restraint devices.

133 [www.nidec.es/tienda/product\\_info.php/products\\_id/242](http://www.nidec.es/tienda/product_info.php/products_id/242) (accessed 15 October 2008). The product image on the NIDEC site showed Myers Enterprises Inc "Stun Cuff Magnum" (catalogue addition dated 4 September 2006), on file with Omega Research Foundation. In December 2009, Myers Enterprises told Amnesty International that the company had not had contact with NIDEC for at least two years (telephone interview with Myers Enterprises representative, 4 December 2009)

134 Telephone interview with Myers Enterprises representative, 4 December 2009; telephone interview with Grupo TDS (Spain) representative, 7 December 2009; email correspondence from Grupo TDS (Spain) representative, 9 December 2009

135 See, for example, the Common Military List of the European Union, adopted by the Council on 10 March 2008 (Equipment covered by the European Union Code of Conduct on Arms Exports, 2009/C98/01)

136 [www.safetynow.com/stunkit1.htm](http://www.safetynow.com/stunkit1.htm) (accessed 21 January 2010). Emphasis added

137 Amnesty International UK Section, *Repression Trade UK Ltd* (July 1992)

138 [www.postoffer.net:8088/mardetail.aspx?Offerid=75814&offertype=b](http://www.postoffer.net:8088/mardetail.aspx?Offerid=75814&offertype=b) (accessed 5 October 2004); subsequent correspondence with import/export agent, on file with Omega Research Foundation; 'Hi-tech gadgets, training on way to upgrade Rab', *Daily Star (Bangladesh)*, 8 December 2004

139 UK Department of Business, Enterprise and Regulatory Reform, *Export Control Act 2002. Review of export control legislation (2007): Government's initial response to the public consultation* (February 2008)

140 UK Department of Business, Enterprise and Regulatory Reform, *Export Control Act 2002. Review of export control legislation (2007): Government's initial response to the public consultation* (February 2008)

141 US Federal Register, Vol. 74, No. 153 (11 August 2009), Proposed Rules, p.40118.

142 EC Regulation 1236/2005, Article 7.1

143 EC Regulation 1236/2005, Article 7.2

144 David Cronin, 'Senegal Media gets a taste of Taser', *IPS News*, 17 January 2009

145 The figures in this section are based on data extracted from the Omega Research Foundation database and include information on companies between 1 January 2000 to 31 January 2007

146 Countries include: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Italy, Latvia, Lithuania, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom

147 Countries include: Czech Republic, France, Germany, Italy, Poland, Spain, United Kingdom

148 'Salesman's torch plan to smuggle stun guns: exclusive', *Sunday Mercury (UK)*, 10 June 2007; 'Man sold stun guns at NEC fair', *Birmingham Evening Mail (UK)*, 23 June 2007

149 'Leg irons row sees two companies thrown out of London arms fair', *Guardian (UK)*, 12 September 2007

150 'Prevent torture equipment sales at arms fairs, say MPs', *Guardian (UK)*, 7 August 2007

151 EU Council Common Position on the control of arms brokering (2003/468/CFSP of 23 June 2003)

152 As well as the cases described in this section, see reports by the Council of Europe's Committee for the Prevention of Torture detailing the use of wall restraints in the Czech Republic (*Visit Report: Czech Republic (2006)*, (CPT/Inf (2007) 32), para 13; and

misuse of handcuffs and leg cuffs in Germany and Slovenia (*Visit Report: Germany (2005)*, (CPT/Inf (2007) 18), e.g. para 14; *Visit Report: Slovenia (2006)*, (CPT/Inf (2008) 7), e.g. para 9)

153 Amnesty International, *Spain: Thorough and independent investigation into death of Juan Martinez Galdeano* ( Index: EUR 41/010/2005)

154 Amnesty International Report 2004, Romania country entry

155 Article 296 of the EEC Treaty exempts military articles from rules governing the internal market, thus allowing states to regulate intra-EU transfers of military equipment. Some Member States, such as Hungary and the UK, already have national regulations covering all international transfers of some police and security equipment, including to other Member States. For Hungary, see Annex to Government Decree 'On the Licensing of the Export, Import, Transfer and Transit of Military Equipment and Technical Assistance' 16/2004 (II.6). For the UK, see UK Department for Business, Innovation and Skills, *UK Military List* (August 2009), <http://www.berr.gov.uk/files/file52653.pdf>

156 EC Regulation 1236/2005, Article 7.1

157 See, for example, the analysis of arms transit controls in EU states in Amnesty International, *Undermining Global Security: The European Union's Arms Exports* (Index: ACT 30/004/2004), Chapter 4

158 Report of the UN Special Rapporteur on the question of torture, Theo Van Boven, Commission on Human Rights (E/CN.4/2005/62), 15 December 2004, para. 31

159 EC Regulation 1236/2005, Article 3.1

160 'Police et Polissons', TV documentary broadcast on *France 3*, 30 March 2008, 23h10 (<http://mavideo.france3.fr/video/iLyROoaf4z.html>). According to a French press report, the officer was subsequently suspended following reports that he had treated a youth in France with excessive force: 'Le Flic Municipale en faisant trop', *Liberation (France)*, 4 April 2008

161 Amnesty International, *Cameroon: Impunity underpins persistent abuse* (Index: AFR 17/001/2009);

162 Correspondence from Taser International, 13 January 2010

163 Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovenia, Spain and the United Kingdom

164 Austria, Bulgaria, France, Hungary, Ireland, Italy, Portugal, Romania, Slovakia and Sweden

165 Correspondence from Belgian Ministry of Economy, 16 October 2007; Correspondence from the Police Department, Ministry of the Interior, Lithuania, 15 October 2007; Email correspondence from Controles a l'exportation, Office des Licences-Direction, Commerce Exterieur, Luxembourg, 17 January 2008; Correspondence from Director of the Department of Trade Policy and Globalisation, Ministry of Economic Affairs, Netherlands, 2 July 2008; Correspondence from Maltese Ministry for Competitiveness and Communications, 19th December 2007

166 Correspondence from Ministry of Commerce, Industry and Tourism, Cyprus, 24 April 2008; email communication from Police Department, Finland, 5 July 2006; Correspondence with Political Department, German Embassy, London, 17 April 2008; Correspondence with Export Regimes and Procedures Unit, General Directorate for International Economic Policy, Ministry of Economy and Finance, Greece, 10 October 2007 and 29 January 2009; Correspondence with State Secretary, Ministry of Economics of the Republic of Latvia, 19 October 2007; Correspondence from Minsiterstwo Gospodarki, 12 October 2007; Email communication from Ministerio de Industria, Turismo y Comercio, Spain, 31 May 2006

167 Correspondence from Arms and Strategic Good Control Bureau, MFA Estonia, 25 October 2007; email correspondence from

Directorate for Foreign Economic Relations, Ministry of the Economy, Slovenia, 15 October 2007 and 3 February 2009; email correspondence from Department of Trade and Industry, UK, 14 July 2006

168 Correspondence from Belgian Ministry of Economy, 16 October 2007

169 Correspondence with the Ministry of Commerce, Industry and Tourism, Republic of Cyprus, 24 April 2008

170 Email correspondence from Italian Ministry of Foreign Trade, January 2008

171 Email correspondence from Finnish Ministry of Interior, 19 November 2007

172 Correspondence from Maltese Ministry for Competitiveness and Communications, 19 December 2007. This stated only that “[no] such equipment is manufactured in Malta”, and did not address the issue of non-manufacturing suppliers and brokers.

173 Correspondence from Belgian Ministry of Economy, 16 October 2007

174 Correspondence with the Ministry of Commerce, Industry and Tourism, Republic of Cyprus, 24 April 2008

175 Email correspondence from Italian Ministry of Foreign Trade, January 2008

176 Website for ‘Security Department’ of Sirien S.A. , distributor for Stinger Systems stun products, [www.radardepolice.be/fr/secure.html](http://www.radardepolice.be/fr/secure.html) (accessed 21 January 2010); emphasis added

177 Specifications for Stinger Systems BandIt restraint belt and S-200 projectile stun weapon on PSA SRL website ([www.psa-srl.eu/stinger/bandit.html](http://www.psa-srl.eu/stinger/bandit.html)) accessed 21 January 2010

178 Email correspondence from PSA SRL – Defense Division, 2 December 2009

179 Taser International logo. N.B. Taser International only produces electric-shock projectile devices and associated data gathering and data storage systems.

180 Telephone interview with NIDEC chief executive officer, December 2008. Prior to this interview, Omega reviewed Nidec's website on the following dates: 6 March 2008, 1 July 2008, 20 November 2008 and 21 November 2008. On 9 December 2008, following the interview, a review of Nidec's website showed that the company was no longer advertising stun cuffs on its website

181 The participating States of the Wassenaar Arrangement are: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, Netherlands, New Zealand, Norway, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom and the USA.

182 Wassenaar Arrangement, *Best Practices For Effective Export Enforcement*, 1 December 2000 ([www.fas.org/asmp/resources/internlorgs/Wassenaar/oth\\_best\\_practices\\_effective\\_enforcement.pdf](http://www.fas.org/asmp/resources/internlorgs/Wassenaar/oth_best_practices_effective_enforcement.pdf) accessed 21 January 2010)

183 Wassenaar Arrangement, *Best Practices For Effective Export Enforcement*, 1 December 2000 ([www.fas.org/asmp/resources/internlorgs/Wassenaar/oth\\_best\\_practices\\_effective\\_enforcement.pdf](http://www.fas.org/asmp/resources/internlorgs/Wassenaar/oth_best_practices_effective_enforcement.pdf) accessed 21 January 2010)

184 'Trading in Torture', *New Scientist* (5 July 2007)

185 'Report Mainz', broadcast on SWR (Germany), 26 Feb 2007, 21h45 (transcript at [www.swr.de/report/-/id=233454/wv=print/pv=print/nid=233454/did=1910884/1iupux0/index.html](http://www.swr.de/report/-/id=233454/wv=print/pv=print/nid=233454/did=1910884/1iupux0/index.html))

186 Parliamentary motion of the FDP, Deutscher Bundestag, Drucksache 16/4446

187 Interview with Echo Industrial Co. Ltd (stun gun) salesman, IFSEC exhibition, Birmingham, May 2007

---

188 'Customs Officers Seize Stun Guns', *The Australian* (8 February 2007); 'Disguised Stun Guns Seized', Australian Customs News Release, 23 March 2005 ([www.customs.gov.au/site/page.cfm?c=5338](http://www.customs.gov.au/site/page.cfm?c=5338)). N.B. This seizure does not, of course, indicate that the French distributor was itself responsible for the unauthorised shipment, or had acted unlawfully in any way. Furthermore, the seizure occurred prior to the entry into force of EC Regulation 1236/2005.

189 Correspondence was sent by Omega Research Foundation to the French company on 24 November 2008, requesting further details about this case. To date no reply has been received.

190 In the EU, export licence details will be entered in Box 44 (the HDR-AI-STMT element) of the central EU customs document, the Single Administrative Document (SAD). See e.g. UK Revenue & Customs guidance on declaring export licence information on SAD declarations for verification by its CHIEF database system ([http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE\\_PROD1\\_027777](http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_027777) accessed 21 January 2010)

191 Single Administrative Document (SAD), Box 33

192 Single Administrative Document (SAD), Box 31. For further information and a copy of the SAD, see [http://ec.europa.eu/taxation\\_customs/customs/procedural\\_aspects/general/sad/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/procedural_aspects/general/sad/index_en.htm) accessed 21 January 2010

193 For the latest CN codes, see EC Regulation 1214/2007 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:286:0001:0894:EN:PDF>). EC Regulation 1236/2005 does include a list of overarching descriptive CN codes which could potentially cover Regulation goods. However these aggregate CN codes are so broad that they do not distinguish, for example, non-licensable electrical goods like microwave amplifiers from (licensable) high-voltage electric-shock stun weapons. Thus their appearance on a customs declaration cannot indicate whether the goods being shipped are licensable under the Regulation or not

194 In mid-2007, following investigation of the company by Omega researchers and investigative journalist Mark Thomas, the UK Crown Prosecution Service successfully prosecuted a China-based trader in high-voltage electric-shock stun weaponry, found to have been marketing stun weapons at a trade fair in Birmingham, UK. However, the trader was prosecuted for possession of an illegal weapon within the UK, not for trading activities

195 Article 6.2 of EC Regulation 1236/2005 stipulates that "[t]he competent authority shall not grant any authorisation when there are reasonable grounds to believe that goods listed in Annex III might be used for torture or other cruel, inhuman or degrading treatment or punishment, including judicial corporal punishment, by a law enforcement authority or any natural or legal person in a third country."

Amnesty International  
International Secretariat  
Peter Benenson House  
1 Easton Street  
London WC1X 0DW

[www.amnesty.org](http://www.amnesty.org)

**AMNESTY  
INTERNATIONAL**

