

Comments by US-Based NGOs on United States Regulations of the Production and Trade of Law Enforcement Equipment and Weapons

April 28, 2023

As US-based non-governmental organizations, we support the Special Rapporteur's efforts to assess the scope of the trade in instruments and weapons that are used in torture and ill-treatment or punishment. To that end we offer some brief introductory commentary followed by detailed responses to the Special Rapporteur's specific questions, based on our knowledge of pertinent US regulations.

Introductory Comments:

The United States has in place a well-developed regulatory regime for licensing the commercial export of dual-use commodities, including items used by law enforcement. Controlled items include a specific category of "specially designed implements of torture," which are subject to a policy of denial for commercial exports to all destinations. We do not know whether the de facto prohibition on commercial exports of torture equipment and the broader export licensing restrictions on other items of concern extend to non-commercial transactions by US government agencies, though we are aware that US statutes generally prohibit the use of US security assistance for police training in other countries.

Although most items specifically mentioned by the Special Rapporteur are covered in the US control list, notably absent are [acoustic devices](#) and weapons employing lasers or optical light.

We would also call attention to transparency issues related to US export of the items of concern. There is an apparent disconnect between the codes used to identify commodities at the licensing phase and the code used to identify the same commodities at the export phase, making it very difficult to assess the scope of the actual trade. The Commerce Control List (CCL) categories and Export Control Classification Numbers (ECCNs) used for export licensing purposes generally provide more explicit and detailed description of commodities, but the US Harmonized Tariff Schedule (HTS) numbers, derived from the international Harmonized System (HS), are used to provide information about actual transactions and trade volume.

Question 1: Regulation of production

1.1 Does your country prohibit or regulate the production of *certain* law enforcement equipment or weapons [in eight named categories including various restraints, shock devices, certain striking weapons and kinetic launchers]?

This question refers primarily to manufacture and production. While a Federal Firearms License is required ([from the ATF](#)) to produce/manufacture firearms, ammunition and “destructive devices” in the US, we’re not aware of any prohibitions or regulations governing the production of less lethal equipment. There may, however, be requirements to produce materials data sheets that are available for public review.

1.2 How are “prohibited goods” defined and categorised under national legislation or regulations ?.

In general, regulatory constraints on production and manufacture at federal, state, and local level relate to product safety, workplace health and safety, quality standards, and environmental standards. While some state laws or local ordinances prohibit unauthorized possession of some items by civilians (eg, [handcuffs in New York City](#)), there are few known restrictions on production. (California is an exception, where the production or possession of [police batons by civilians is prohibited](#).) In general, less lethal security equipment is widely available through local and on-line sources. Export controls are a main avenue for regulation.

Question 2: Regulation of trade

2.1 Does your country have national legislation or regulations that *prohibit* the trade (import, export, transit) in any of the goods listed at 1.1. Please explain these legislation/measures and provide a copy or hyperlink to those documents.

The US Export Administration Regulations (EAR) govern the export of “dual use” items and are published in the Code of Federal Regulations (CFR). There is no comparable regulatory regime for imports, though munitions imports and firearms imports are regulated. Within the EAR, a Commerce Control List (CCL) sets out categories of items that must be licensed for lawful export, and the conditions for granting licenses. This list is administered by the Department of Commerce’s Bureau of Industry and Security (BIS) [Since 1995](#) the US has imposed export controls on “specially designed implements of torture, including thumbscrews, thumbcuffs, handcuffs, and spiked batons,” applying a specific Export Control Classification Number (ECCN) which is regulated in the CCL: ECCN 0A983 (found in [CCL, Category 0](#)). Commercial export of these items are subject to a general policy of denial that has been codified in EAR 742.11 (15 CFR 742.11), stipulating that in support of US foreign policy to promote human rights, export of these items requires a license and “applications for such licenses will generally be denied to all destinations.”

2.2 Does your country’s national regulatory framework also regulate the trade (import, export, transit) in goods that have a “legitimate law enforcement purpose, but which may be easily abused for torture and ill-treatment or punishment”? Please explain.

Yes, export of these items is governed under the same regulatory regime as described in the first two paragraphs of the response to Question 2.1, above. Many are listed on the CCL and given the designation of “Crime Control” as a “Reason for Control”, subjecting them to greater security with respect to the

potential for abuse. In regard to the list below, the ECCN categories for some items are readily identified within the CCL. According to the [BIS 2021 Annual Report to Congress](#), items that are subject to the EAR but not described on the CCL are designated “EAR99.”

Please be specific regarding the regulation of any of the following law enforcement equipment and consider the following:

- 1. Riot control agents, malodorants, and associated delivery mechanisms.** US export regulations distinguish two classes of riot control agents and correspondingly assign separate ECCN numbers and reasons for control. One class (ECCN 1A984) includes pepper spray and smoke bombs; the other (ECCN 1C607.a) includes military-grade riot control agents that until 2020 were included in the US Munitions List. ECCN 1A984 presumably includes tear gas in canisters. Delivery mechanisms for the military grade agents are controlled by ECCN 1A607: Military dissemination for riot control agents. Delivery mechanisms for less lethal grenades and projectiles are controlled by ECCN 0A503.
- 2. Handcuffs, leg-cuffs and associated restraints, spit hoods and spit guards.** Controlled under ECCN 0A982: Law enforcement restraint devices, including leg irons, shackles, and handcuffs; straight jackets; stun cuffs; shock belts; shock sleeves; multipoint restraint devices such as restraint chairs; and “specially designed” “parts,” “components” and “accessories,” n.e.s. In 2010, BIS [declined to include electric shock belts](#) in the export-prohibited ECCN for implements of torture (above, ECCN 0A983).
- 3. Acoustic devices and weapons that do not cause long-term or permanent damage to hearing.** [Category 6](#) of the CCL relates to Lasers and Sensors, including some auditory equipment, but does not appear to cover acoustic devices and weapons, nor are such weapons mentioned in Category 0 (where most weapons are listed). As above in 2.2, these items may be categorized as EAR99.
- 4. Dazzling weapons employing lasers or optical light.** [Category 6](#) of the CCL relates to Lasers and Sensors but does not appear to cover weapons employing lasers or optical light, nor are such weapons mentioned in Category 0 (where most weapons are listed). As above in 2.2, these items may be categorized as EAR99.
- 5. Batons, truncheons, and other similar hand-held striking weapons.** Controlled under ECCN 0A978: Law enforcement striking weapons, including saps, police batons, side handle batons, tonfas, sjamboks, and whips.
- 6. Kinetic impact projectiles (including rubber bullets and plastic bullets) and associated launchers** As clarified by a Federal Register [notice](#) in 2021, rubber bullets are controlled as 0A505.b, “buckshot of any material,” under the general heading of 0A505 Ammunition, and export of all items in this category are subject to the “Crime Control” reason for control. Launchers are controlled by ECCN 0A503: Discharge type arms.
- 7. Electric shock projectile devices.** Controlled under ECCN 0A503: Discharge type arms; non-lethal or less-lethal grenades and projectiles, and “specially designed” “parts” and “components” of those projectiles; and devices to administer electric shock, for example, stun guns, shock batons, shock shields, electric cattle prods, immobilization guns and projectiles; except equipment used to slaughter domestic animals or used exclusively to treat or tranquilize

animals, and except arms designed solely for signal, flare, or saluting use; and “specially designed” “parts” and “components,” n.e.s.

8. **Other.** Thumbscrews are specifically identified in ECCN 0A983 as an instrument of torture along with thumbcuffs, finger cuffs, spiked batons.

2.4 Other activities: Does the relevant legal framework (or alternative measures) regulate any of the following activities: promotion, brokering, transportation, technical assistance¹⁰, and training in the use of prohibited or controlled goods?

Not as far as we know. *[There are statutes and regulations on arms brokering, but they are applicable to brokers arranging import or export of items on the US Munitions List (USML) or certain items (semi-automatic and non-automatic firearms) recently transferred from the USML to the CCL. They do not pertain to items of concern here, except possibly to the military-grade riot control agents and delivery mechanisms.]*

2.5 Definitions and categorizations: How are prohibited and/or controlled goods defined and categorised under national regulatory framework?? If there are lists of prohibited and/or controlled goods, please provide details, including what mechanisms there are for updating these categories/lists, how often they are updated, and when was this last done.

The items of concern are addressed in the context of export controls. The US Export Administration Regulations (EAR) govern the export of these “dual-use” items and are published in the Code of Federal Regulations (CFR). There is no comparable regulatory regime for imports, though munitions imports and firearms imports are regulated. Within the EAR, the Commerce Control List (CCL) sets out categories of items that must be licensed for lawful export, and the conditions for granting licenses. The commodity controls can be updated through a regulatory process that sometimes involves public comment.

In addition, restrictions can be placed on the destination or end use for certain commodities – initiated either by Congress or the Administration. Such actions typically involve lethal weapons or sensitive technology but at times have been applied to less lethal weapons – such as water cannons.

2.6 Actors: Please indicate whether the relevant legal framework (or alternative measures) covers trade of goods undertaken by any of the following actors: commercial companies, State-owned companies, police forces, military forces, other State or private entities.

The relevant framework applies to commercial transactions. For items of concern, no licensing exemption exists for government agencies.

Additionally, [a federal statute](#) prohibits US security assistance funds from being spent on police training in other countries, though numerous exceptions exist.

2.7 Human rights risk assessment: When determining whether to allow specific exports of controlled law enforcement equipment and weapons to a potential end user in a recipient State, are the goods subject to a human rights-based risk assessment procedure? As part of that procedure, is there an

assessment of the risk that the goods to be exported may be used for potential acts of torture or other cruel, inhuman, or degrading treatment or punishment? If so, please describe what this assessment entails.

As described in [this document](#), existing policy requires a human rights review for the export of items specifically listed in the CCL. [EAR Part 742](#) provides a description of the various “reasons for control” that may determine whether a license is granted. The specific controls “Crime Control” (CC) and “Regional Stability” (RS) relate to human rights. In 2020, BIS issued a [notice](#) indicating that all items in the CCL could be subject to human rights scrutiny under the CC reason for control. While we have no direct knowledge about what the actual assessment entails for routine license applications, BIS (in coordination with other agencies) does issue [lists of prohibitions](#), related to specific recipients, called the “Entity List.” This list identifies individuals or entities that are subject to additional restrictions before they can receive controlled items from the US (whether they are exported directly or are US-origin items transferred in-country).

2.8 Denial of export: In the last five years has your Government denied any requests (or licenses) to export law enforcement equipment and if so, how many times and on what grounds?

This information is not generally available to the public. In its annual report to Congress, the Commerce Department does provide summary information about the number of licenses granted and denied, but not with reference to items of concern here. [[BIS](#) does, however, offer information about the conditions under which its information may be made available to the public: *“Information we receive through our Web sites is disclosed to the public only pursuant to the laws and policies governing the dissemination of information. For example, BIS policy is to share information which is of general interest, such as frequently asked questions about our regulations, but only after removing personal or proprietary data. However, information submitted to BIS becomes an agency record and therefore might be subject to a Freedom of Information Act request.”*]

2.9 Reporting: Are exporters (including the State) required to report to the Government, Parliament or another entity, on the exports of controlled goods and related training? Are these reports publicly available? If so, please provide copies from 2018-2022.

The US Bureau of Industry and Security (BIS), in the Department of Commerce, makes an annual report to the US Congress on licenses issued (which are normally valid for a span of 4 years). The most [recent report](#), covering 2021, was issued in September 2022. Reports from [2018](#), [2019](#), [2020](#) and additional years are available on the BIS website.

Actual trade statistics (imports and exports) are collected by US Customs Enforcement, a different agency – using a different set of commodity descriptors and HS codes.

2.10 Regional or international standards: Is the domestic legal framework (or alternative measures) based on existing regional or international standards, whether binding or non-binding?

US laws and regulations rarely invoke or cite international standards, and especially human rights law and norms.

2.11 Future intentions: If your State has no legislation or measures currently in place, is your Government intending to introduce such legislation/measures?

Not that we are aware of, aside from regular updates to the [BIS Entity List](#).

Signed,

Amnesty International USA

American Civil Liberties Union

National Religious Campaign Against Torture