



## **Submission in response to the call for input to inform the Special Rapporteur on torture’s annual interim report to be presented to the UN General Assembly at its 78th Session in October 2023**

28 April 2023

Harvard Law School’s International Human Rights Clinic (the Clinic) provides this submission in response to the call of the Special Rapporteur on torture for input to inform her upcoming report on the nature, scope and regulation of the production and trade of law enforcement equipment and weapons and the relationship with torture and other cruel, inhuman or degrading treatment or punishment. The Clinic is a member of the Torture-Free Trade network of civil society organizations and has also joined a joint submission by 57 members of that network.<sup>1</sup>

### **National measures to control trade in law enforcement equipment**

In response to the Special Rapporteur’s call, the Clinic has undertaken desk research to provide information on national measures to control trade in law enforcement equipment outside the European Union.<sup>2</sup> Due to time constraints, that research has been limited in scope and largely focused on export controls. Initial observations include:

- We have not found examples of countries that explicitly and comprehensively control the full array of law enforcement equipment that the Special Rapporteur’s questionnaire covers.<sup>3</sup> Nor have we identified examples of states that provide easily accessible public information about controls on law enforcement equipment.
- In some cases, export controls aimed at military and dual-use goods also include some types of law enforcement equipment.
  - For example, states that are part of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies are expected to control the export of riot control agents and non-military body armor.<sup>4</sup>

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<sup>1</sup> Torture-Free Trade network submission: “Supporting International Regulation of the Production and Trade of Law Enforcement Equipment to Help Prevent Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment”. See [the Shoreditch Declaration for a Torture-Free Trade Treaty](#).

<sup>2</sup> We focus on countries outside the EU as we anticipate that other submissions will provide an overview of EU member states’ measures pursuant to the EU Anti-Torture Regulation (No 2019/125). We adopt the definition of law enforcement equipment outlined in [Essential Elements of a Torture-Free Trade Treaty](#), a 2022 publication the Clinic authored with Amnesty International and the Omega Research Foundation.

<sup>3</sup> The questionnaire in [the call for input](#).

<sup>4</sup> The Wassenaar arrangement lists “riot control agents” (1(A)(4)(a)(4)) and “soft body armour not manufactured to military standards or specifications” (1(A)(5)(a)) in its [Control List](#), for example. See, for example, Singapore, [Strategic Goods \(Control\) Order](#), ML7, 1A005; Australia, [Defence and Strategic Goods List 2021](#), ML7, 1A005.

- Likewise, states that are party to Protocol IV of the 1980 Convention on Certain Conventional Weapons are required to prohibit transfers of blinding laser weapons.<sup>5</sup>
- Some countries appear to have no or very limited controls on law enforcement equipment.
  - A 2020 study of South Africa’s involvement in the manufacture and trade of law enforcement equipment found that the country had “no meaningful controls” on the trade, despite South Africa having an “active industry and market for a range of law enforcement products that are of particular concern.”<sup>6</sup>
- Some countries’ export control policies or laws include general language that could encompass multiple types of law enforcement equipment depending on how national authorities interpret and apply that language in practice.
  - Mauritius’ law prohibits, among other things, the manufacturing and transfer of “weapons designed or adapted for the discharge of noxious liquid, gas, or other thing, without the authority of the Police Commissioner”. Mauritius has stated that it interprets “other thing” to include “injurious pulses such as electric ones” which would cover electric shock devices.<sup>7</sup>
  - Several other countries’ policies or laws include similar language to Mauritius’, but we were unable to locate public guidance on how national authorities interpret and apply this language. Nigeria and Ghana, for example, both restrict imports of “weapons... designed for the discharge of any noxious liquid, gas, or other similar substance[s].”<sup>8</sup>
  - New Zealand has “catch-all controls” that official explanatory guidance states “appl[y] to goods and technologies which are not regulated items under New Zealand’s export controls regime for military and dual-use goods (those with civil and military uses), but which could be put to military or police uses or used to support military or police operations.”<sup>9</sup> While a number of countries’ laws contain catch-all measures that could capture law enforcement equipment in some circumstances (typically linked to security-related reasons), New Zealand’s catch-all controls appear to cover exports of any law enforcement equipment in all circumstances.<sup>10</sup>

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<sup>5</sup> 1995 Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention on Certain Conventional Weapons), Article 1 (“The High Contracting Parties shall not transfer such weapons to any State or non-State entity”). See, for example, Canada’s export controls on directed energy equipment or weapons: Government of Canada, [A Guide to Canada’s Export Control List](#), 2021, at §§2-19(f), 5501 (“blinding laser weapons”).

<sup>6</sup> Institute for Security Studies, [The trade in tools of torture: A South African case study](#), 2020, pp 2 and 11.

<sup>7</sup> Call for input: United Nations General Assembly resolution 73/304 “Towards torture-free trade: examining the feasibility, scope and parameters for possible common international standards”, [Reply from the Republic of Mauritius](#), at para 2, referring to Firearms Act 2006, section 24.

<sup>8</sup> See Nigeria Customs Service, [Goods: the Importation of which is Absolutely Prohibited](#); Ghana Revenue Authority, [Import Prohibitions and Restrictions](#), 6B.14. The language used in the policies of Mauritius, Ghana, and Nigeria may derive from the United Kingdom Firearms Act 1920 (repealed, section 17(1)(b)), which is virtually identical.

<sup>9</sup> “[Explanatory Note: Catch-all Controls Gazette Notice](#)”, November 2020, referencing [Gazette Notice 2020-go4223](#) (pursuant to Customs and Excise Act 2018, section 97, which defines “military” as “includ[ing] any armed force, paramilitary force, Police force, or militia”). Exports for use in specific countries (including to EU member states) are, however, exempted.

<sup>10</sup> For example, under [Australian catch-all legislation](#), the government “has the ability to prohibit the export or supply of goods and technology that could be used in a weapons of mass destruction program or contribute to a military end-use that could prejudice the security, defence or international relations of Australia.”

- Some countries incorporate human rights considerations into export control processes that cover some types of law enforcement equipment, but we did not find evidence that this was a widespread practice.
  - Canada requires export permits for riot control agents and certain electric shock weapons, such as Tasers, and conducts a human rights assessment process based on the criteria in the 2013 Arms Trade Treaty before issuing export permits for this equipment.<sup>11</sup>
  - The United States,<sup>12</sup> Australia,<sup>13</sup> and New Zealand<sup>14</sup> also explicitly include human rights considerations in export control processes that cover some types of law enforcement equipment.

### **Building transparency in trade through HS codes**

The scale and characteristics of the international trade in law enforcement equipment are challenging to research and analyze. This is the case at least in part due to fragmented statistics and data. One approach to build transparency in the trade of law enforcement equipment would be for states to use the same codes to categorize different types of equipment in trade statistics and customs processes. The best way to achieve the goal of common codes would be for the World Customs Organization (WCO) to develop unique Harmonized Commodity Description and Coding System (“HS”) codes specific to different types of law enforcement equipment.<sup>15</sup> As the WCO notes:<sup>16</sup>

[The HS system] comprises more than 5,000 commodity groups; each identified by a six digit code, arranged in a legal and logical structure and is supported by well-defined rules to achieve uniform classification. The system is used by more than 200 countries and economies as a basis for their Customs tariffs and for the collection of international trade statistics. Over 98 % of the merchandise in international trade is classified in terms of the HS.

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<sup>11</sup> Export and Permits Act 1985, section 7.3(1) (specifying the human rights assessment process for “munitions”, among other things). [A 2021 Canadian parliamentary report](#) confirms that items in group 2 (“munitions”) of Canada’s export control list, which includes tasers and riot control agents, are subject to the human rights assessment (p 7). [Guide to Canada’s Export Control List](#), §§ 2-1(e)(1) (tasers); 2-7(a) (riot control agents).

<sup>12</sup> For example, applications to export items controlled for “crime control” reasons under US law (which includes, for example, rubber bullets) “will generally be considered favorably on a case-by-case basis, unless there is civil disorder in the country or region or unless there is a risk that the items will be used to violate or abuse human rights”, [Export Administration Regulations](#) § 742.7(b)(1). See the submission of Amnesty International USA, the American Civil Liberties Union, and National Religious Campaign Against Torture.

<sup>13</sup> The criteria for issuing export permits include having regard to the risk that goods listed on Australia’s export control list, which includes some types of law enforcement equipment (such as tear gas), “may be used to commit or facilitate serious abuses of human rights”. Australia, [Defence Trade Controls Regulation 2013](#), reg 8.

<sup>14</sup> Although not required by law, the New Zealand Ministry of Foreign Affairs and Trade [publishes](#) the criteria it uses to assess exports of controlled goods, which include law enforcement equipment (see discussion above on New Zealand’s “catch all controls”; some goods, such as tear gas, are on the country’s export control list). The criteria draw on Article 7 of the 2013 Arms Trade Treaty, including whether “the goods to be exported could be used to commit or facilitate ... a serious violation of international human rights law”.

<sup>15</sup> The HS was established under the 1983 International Convention on the Harmonized Commodity Description and Coding System. For details of how the amendment process operates, see World Customs Organization, “[Amending the HS](#)” and [this accessible summary](#) produced by the WCO in the context of the 2013 Arms Trade Treaty.

<sup>16</sup> World Customs Organization, “[What is the Harmonized System \(HS\)?](#)”.

Consequently, the HS is “a universal economic language and code for goods.”<sup>17</sup> However, its current groups are too broad or encompassing to track trade in different types of law enforcement equipment.<sup>18</sup> For example:

- HS code 830140<sup>19</sup> includes metal handcuffs, but also metal luggage locks, among other things.
- HS code 930400<sup>20</sup> includes guns for firing rubber bullets, but also guns for firing automatic syringes containing vaccines at free-roaming animals, among other things.

Building on the HS, some regional organizations have developed codes specific to some types of law enforcement equipment.<sup>21</sup> However, we have been unable to identify any region or country that has developed a comprehensive set of codes covering the various different types of law enforcement equipment in discrete categories. This conclusion indicates that, in general, law enforcement equipment is not recognized as a distinct set of goods within trade statistics and customs processes.

A Torture-Free Trade Treaty establishing which goods should be subject to trade controls would facilitate developing new HS codes, creating a uniform system for categorizing equipment and providing clarity for states seeking to control and track trade in the different types of law enforcement equipment.<sup>22</sup> Goods covered in treaties regulating international trade in dangerous or extraordinary goods have routinely received HS codes. For example, the WCO developed HS codes for goods regulated under treaties on chemical weapons,<sup>23</sup> hazardous waste,<sup>24</sup> organic pollutants,<sup>25</sup> pesticides,<sup>26</sup> endangered species,<sup>27</sup> and substances that deplete the ozone layer,<sup>28</sup> among others.<sup>29</sup>

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<sup>17</sup> Ibid.

<sup>18</sup> The [EU Anti-Torture Regulation](#) includes the EU “[Combined Nomenclature](#)” (CN) codes covering each type of equipment it regulates in its annexes. CN codes are eight digit codes: the first six digits are an HS code and the last two digits reflect further EU subdivisions within the group of goods that the HS code covers. As such, by providing the CN codes for different types of equipment, the EU Anti-Torture Regulation annexes indicate the HS codes that cover many types of law enforcement equipment, albeit in groups that also contain goods that are not law enforcement equipment.

<sup>19</sup> HS subheading: “Locks of base metal (excluding padlocks and locks for motor vehicles or furniture).”

<sup>20</sup> HS subheading: “Firearms; (e.g. spring, air or gas guns and pistols, truncheons), excluding those of heading no. 9307”.

Explanatory notes are available at [WCO Trade Tools](#).

<sup>21</sup> For example, the [ASEAN Harmonized Tariff Nomenclature](#) contains specific categories for handcuffs (8301.40.10) and police shields (3926.90.41); the [MERCOSUR Common Nomenclature](#) has a category for “aerosol-type containers containing chemicals or Capsicum Oleoresin for annoying purposes” [translation] (9304.00.10); the [Caribbean Community system](#) has codes for plastic (3926.90.60) and metal (7326.90.10) handcuffs.

<sup>22</sup> The relationship between HS codes and national export control codes varies depending on the country.

<sup>23</sup> 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction.

<sup>24</sup> 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

<sup>25</sup> 2001 Stockholm Convention on Persistent Organic Pollutants.

<sup>26</sup> 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade.

<sup>27</sup> 1973 Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

<sup>28</sup> 1987 Montreal Protocol on Substances That Deplete the Ozone Layer.

<sup>29</sup> See World Customs Organization: “[Amendments to the Harmonized System Nomenclature effective from 1 January 2002](#)” (CITES, Basel Convention); [2007 amendments](#) (Rotterdam Convention, Montreal Protocol); [2012 amendments](#) (Rotterdam Convention, Montreal Protocol); [2017 amendments](#) (Stockholm Convention, Rotterdam Convention, Chemical Weapons Convention); [2022 amendments](#) (Basel Convention, Chemical Weapons Convention, Rotterdam Convention, Stockholm Convention, Kigali Amendment to the Montreal Protocol).

A future Torture-Free Trade Treaty could encourage the development of relevant HS codes. The drafters of the 1998 Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade included an article in that treaty stating that “the Conference of the Parties shall encourage the WCO to assign specific Harmonized System customs codes to the individual chemicals or groups of chemicals [listed in the treaty]”, and codes were subsequently developed.<sup>30</sup> Although binding amendments to the HS are only published every five years, the WCO has the ability to publish non-binding recommendations on an annual basis.<sup>31</sup> For example, the WCO issued a non-binding recommendation urging states to separately classify goods controlled under the 2001 Firearms Protocol<sup>32</sup> just thirteen months after the UN General Assembly adopted that treaty.<sup>33</sup>

We encourage the Special Rapporteur to draw attention to the opportunity that a Torture-Free Trade Treaty would present for the development of HS codes that would facilitate uniformity in reporting and greater transparency in the trade in law enforcement equipment.

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<sup>30</sup> 1998 Rotterdam Convention, Article 13(1). See amendments referenced in footnote 29.

<sup>31</sup> World Customs Organization, “[Amending the HS](#)”.

<sup>32</sup> 2001 Protocol Against the Illicit Manufacturing and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the 2000 UN Convention against Transnational Organized Crime.

<sup>33</sup> [Recommendation of the Customs Co-operation Council concerning the \[2001 Firearms Protocol\]](#), June 2002. Discussions on creating HS codes relevant to the 2013 Arms Trade Treaty are ongoing as of April 2022: Arms Trade Treaty Working Group on Transparency and Reporting, [Co-Chairs’ Report of 17 February 2022 Meeting](#), ATT/CSP8.WGTR/2022/CHAIR/722/M1.Rep, para 15.