**Submission for the Report to the General Assembly on torture-free trade: examining the feasibility, scope and parameters for possible common international standards**

**Government of Canad**a

First of all, the Government of Canada would like to reaffirm our abiding commitment to achieve a world without torture or other cruel, inhuman or degrading treatment or punishment (CIDTP). We stand in solidarity with the victims and survivors of torture.  As party to the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty and as a proud member of its Group of Friends, initiated by the World Coalition Against the Death Penalty, Canada has abolished capital punishment and opposes its use internationally.  Canada is also party to the Convention against Torture and Other CIDTP and the International Covenant on Civil and Political Rights.  Canada has implemented the prohibition against torture and CIDTP in domestic laws, policies and programs. Canada is also pleased to be a member of the Torture-Free Trade Global Alliance, and supports the adoption of effective measures to control trade in products used for capital punishment and torture.

1. *What are the regional and/or national instruments or policies guiding your country for the regulation of trade in goods used for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment? Please provide examples. Which government department/agency is responsible for monitoring the implementation of such regulations/policies, if any?*

There are no explicit provisions in Canadian law that specifically address trade in items specifically designed for a) capital punishment b) torture or other cruel, inhuman or degrading treatment or punishment (CIDTP).

Canada maintains significant controls on the import and export of certain weapons through the *Export and Import Permits Act* and the *Customs Tariff Act*. The *Export and Import Permits Act* references the *Criminal Code* for the definition of what constitutes prohibited weapons and devices. However, a “prohibited weapon or device” is not necessarily specifically designed to inflict torture or CIDTP.

Global Affairs Canada administers Canada’s export controls for goods and technologies (not just military items) listed on the control lists established in the four multilateral export control regimes (Wassenaar Arrangement, Missile Technology Control Regime, Australia Group and Nuclear Suppliers Group).

The objective of these controls is to ensure that exports from Canada:

* do not cause harm to Canada or our allies,
* do not undermine national or international peace and security,
* do not contribute to regional conflicts or instability,
* do not contribute to the development of weapons of mass destruction or their means of delivery,
* are not used to commit international human rights or humanitarian law violations,
* are not used to facilitate acts of terrorism or organized crime, and
* are consistent with existing sanctions.

Canada does not, at present, have specific controls with respect to instruments of torture.

Of the items on the EU “Anti-Torture Regulation” list, Canada controls the import and export of tasers as a prohibited firearm.

Canada does not have re-export controls and therefore does not control the movements of exported goods after they have reached the destination listed on the export permit.

1. *Have there been any investigations, prosecutions and/ or convictions for breaches of national regulations on the trade in goods indicated in paragraph 8 of the introduction to this questionnaire? If so, please provide details.*

There have been no prosecutions or convictions under either the *Export and Import Permits Act*, the *Special Economic Measures Act* or the *United Nations Act* in connection with the trade of any of the goods referred to above. However, there have been some convictions under the *Criminal Code* and the *Customs Act* for the illegal importation of “electric shock weapons”, “electric shock devices” and “riot control agents”.

1. *Do you agree with the proposed categorization of goods used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment indicated in paragraph 8 of the introduction to this questionnaire (see above)? If not, which categories would you propose?*

Canada does agree with the proposed practical categorization of goods, in order to clearly distinguish between goods to be banned, goods to be controlled, as well goods used for capital punishment and goods used for torture or CIDTP. To begin, Canada recommends focusing on achieving agreement on guidelines related to goods that represent the bulk of international trade in such items, in order to have the maximum impact on incidents of torture globally.

Of note, Canada’s export control system classifies items by their technical characteristics rather than by end-use, and would therefore require guidelines that outline the agreed technical characteristics of items; this may be the same for other States.

1. *Please indicate whether you believe there should be an exhaustive list of goods under each category. If yes, should there be a mechanism for regular updating of the lists under each category?*

Yes, an agreed-upon list of goods as part of the common international standards would provide consistency amongst the partners of the initiative and could be used as a guideline for the development of national control lists. In order to ensure the broadest adoption of the common international standards, it could be important to provide flexibility to States to control items as they deem appropriate and in line with their national legislation and regulations. If an agreed-upon list of goods is adopted, Member States should review it regularly, and be able to propose the removal or addition of goods.

1. *Should the proposed common international standards prohibit trade in goods which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment? If not, please provide further explanations.*

Yes, the common international standards should urge the prohibition of trade in items which have no practical use other than for the purpose of capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. It will be important for States to carefully agree upon and technically define what those items might be. States should be responsible for domestic implementation of their own control list and system.

1. *Should the proposed common international standards provide for strict control of trade in goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and goods that could be used for the purpose of capital punishment? If not, please provide justification.*

The proposed standards should recommend measures to control trade in these goods. States should be responsible for domestic implementation of their own control list and system. This reflects how current multilateral export control regimes function.

1. *What types of activities linked to "import, export and transfer" should the proposed common international standards regulate? Please consider activities such as transit, promotion, technical assistance and training, brokering, sharing technology, manufacturing, production and commercial marketing, among others. Please also provide an explanation for why these activities should be regulated or not.*

Multilateral export controls regimes focus primarily on regulating the export or transfer of controlled goods and technologies. This includes technical assistance and training, and sharing technology. At this time, Canada does not recommend focusing on domestic activities such as manufacturing, production and commercial marketing.

1. *Please indicate which risk assessment mechanisms and criteria should be considered for the import, export and transfer of a) goods that could be used for the purpose of torture or other cruel, inhuman or degrading treatment or punishment and b) goods that could be used for the purpose of capital punishment. Please consider, inter alia, the criteria for preventing diversion to third countries.*

Canada could consider modelling the risk assessment mechanisms and criteria on those used in the Arms Trade Treaty (i.e. “overriding risk”, “serious violation of international human rights law”, etc.). However, not all countries have implemented the ATT criteria and risk test, and therefore this may not be acceptable to those who have not. States could commit to applying the same standards as they do for their existing export controls or at least a standard that is no less rigorous.

1. *Please indicate what you consider to be the most suitable type of international instrument to establish common international standards for regulating goods used for capital punishment or torture or other cruel, inhuman or degrading treatment or punishment. Please provide further explanation.*

In order to find the most effective means to end the trade in goods used for capital punishment and torture, Canada’s view is that it is important to consider the full range of possible options to establish common international standards. We believe that global support for the initiative will be key to achieving the goals, hence the importance of looking at options with the broadest adoption possible.

International standards that would inform national implementation should be considered. This is in line with how other export control regimes function. For example, the Nuclear Suppliers Group Guidelines are implemented by each Participating Government (PG) in accordance with its national laws and practices. The Australia Group is an informal forum through which Members can harmonize their national export control measures. The MTCR coordinates national export licensing efforts. The Wassenaar Arrangement’s Participating States seek through their national policies to control the transfer of certain goods.

Non-binding international standards which inform national implementation could result in a higher level of participation than a treaty-level instrument, as states may prefer the flexibility to take into account their domestic and international context as they develop their own national system. This also takes into account the varying ability of states to practically control trade in controlled items, which is uneven globally as seen through the outreach efforts of the existing multilateral control regimes.