

Gun Owners of America comments on the Clinton Administration proposal to ban certain firearms from importation

Gun Owners of America, a not-for-profit association of Americans devoted to preserving their firearms rights, submits the following comments on the proposal by the Department of the Treasury and the Bureau of Alcohol, Tobacco and Firearms to ban certain firearms from importation.

The firearms proposed to be banned are essentially semiautomatic rifles based on the core design of the Kalashnikov, the FAL, the HK-91, and the Uzi. We would note in preface that there is absolutely nothing distinctive in these designs or their functioning, save that some people might consider them "military- looking" and thus "not right for ordinary Americans to own." As a simple example, the Kalashnikov action is merely a combination of features of other previous firearm actions.

The operating system for locking the Kalashnikov family of weapons is very similar to that of the US M1 and M14 rifles, and the M1/M2 carbines. In fact there is little new about the individual design elements of the Kalashnikov weapons. ... The bolt is very similar in design and size to that of the 7.62 x 33 mm US M1 Carbine. ... The trigger/fire control mechanism of the Kalashnikov weapons is far more interesting from a design standpoint. ... Again, there is little that is absolutely new; it is just the cleverness of the package that is fascinating. The trigger mechanism in principle is the same as that employed in the M1 and M14 rifles, and the AK 47 and AKM/RPK mechanisms differ in some detail from one another. (*Edward Ezell, The AK47 Story, at pp. 161-62*).

We might add that Kalashnikov took the safety of the Remington Model 8, one of the earliest sporting semiautomatics, and added that as his combination safety and selector. The Kalashnikov is thus a combination of features of the American M-1 Garand, commonly used in rifle target competitions, the M-1 carbine also used in competition, and the Remington Model 8, designed for hunting.

The proposal also seeks to ban, as a Kalashnikov variant, the Israeli Galil Sporter. The Galil is likewise based upon heavy copying. Its inventor

...worked up a 5.56 mm version of the AK47 using a barrel, bolt face, parts, and 30-shot box magazines from the American Stoner 63 Weapons system. The test weapon showed excellent promise. In the next step, preparation of a production model, IMI engineers purchased samples

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of the Valmet M62 from the European-American firm Interarms.... To these Finnish receivers, his production people mounted barrels machined from Colt M16 barrel blanks. A modified Stoner 63 magazine was evolved for the rifle.

(The AK47 Story at 207-09).

Our point is essentially that there is nothing unique about the designs named. They are simply different approaches to making a semiautomatic rifle. The only conceivable rationale for singling them out for an import ban would be either:

1. Treasury believes Americans should not own any rifle, and these are simply examples arbitrarily chosen for banning at this moment; or
2. Treasury finds something of the designs lacking in aesthetics; a semiautomatic rifle should have its gas tube below rather than above its barrel, or should have a small rather than a large safety, and desires to impose its aesthetic judgments on Americans.

Neither of these judgments would be based upon law or upon reason.

To move from the general to the specific, GOA would note that the statute provides that Treasury "shall" authorize importation if a firearm is, inter alia, "generally recognized as particularly suitable for or readily adaptable to sporting purposes." 18 U.S.C. 925(d)(3). These are two independent sets of qualifications.

The first criterion was considered by Treasury in an earlier proceeding. See *Report and Recommendations of the ATF Working Group on the Importability of Certain Semiautomatic Rifles* (July 1989).

The working group recommended, and the Director accepted, certain criteria for importation. The criteria employed were actually negative -- a gun was suitable for sporting use if it did not have a flash suppressor, bayonet lug, folding stock, etc. Thus the working group found that the Valmet Hunter, a Kalashnikov variant, was suited for sporting purposes due to removal of these features. (*Report*

at 9). And thus Treasury subsequently allowed importation of firearms which met the criteria set out by the working group -- which firearms encompass all those on the list. Yet Treasury now proposes to ban firearms -- most conspicuously the Saiga rifle and the Galil Sporter -- which have, like the Valmet, conformed to the standard and the agency's past interpretation of law.

The *Report* likewise considered how the firearms in question were treated in the firearms community. At the time, it found that some had not been written up as suitable for sporting use and were not used in those sports which the drafters considered acceptable. ¹

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But since the *Report* there have been significant changes. First, with the widespread use of these firearms in sport, gun magazines have documented their sporting use. As but one example, we would cite an article in the "Hunting Guns" column of *The American Hunter*, March 1989 at p. 56. The article is devoted to the H&K 91. It notes that the author has hunted black bear, Dall sheep, and coyotes with that rifle, and notes that the rifle has many attributes useful to a hunting arm: dependability, minute-of-angle accuracy, light recoil, and an excellent mounting system for a telescopic sight. Any review of *Guns and Ammo*, *The American Hunter*, or other widely circulated firearm publications will show similar articles depicting the sporting use of most of the firearms on the proposed banned list.

Second, the sport of Practical Rifle Shooting, with formal competitions, has become increasingly popular. We are informed that the Kalashnikov variants are particularly prominent in this sport. They offer virtually the only way to engage in the competition without spending \$800 or more for a rifle, and accordingly are used by upwards of 50% of competitors. They offer reliability, sufficient but not excessive power, and relatively little muzzle rise in recoil. All of these are highly desirable features in Practical Rifle competition. In light of this, it is impossible to contend that the Kalashnikov design is not suited for "sporting use."

But the statute allows firearms to qualify for importation under a second criterion, if they are "readily adaptable" to sporting use. Treasury has adopted an expansive definition of the word "readily" as used in the Gun Control Act. In *United States v. Smith*, 477 F.2d 399 (8th Cir. 1973), it successfully argued that a firearm was "readily" restored to fire, even though its barrel had been welded shut at the breach and the barrel welded to the receiver. Treasury contended, and the court accepted, that the necessity of cutting off the barrel, drilling out its remnants, rethreading the receiver, and attaching a new barrel, did not prevent it from being "readily" restored.

It goes without saying that, if this is the test, any firearm on the list could "readily" be adapted to any possible sporting purpose. Barrels, stocks, and any other features could be changed in a fraction of the time necessary to do the machine shop work in *Smith*.

Gun Owners of America would close by noting its objection to the "sporting purposes" test itself. The framers of our Bill of Rights wisely provided for a "right of the people to keep and bear arms," and not for the sake of deer hunting or competitive shooting. The framer's writings upon the subject stress the underlying political judgment: the people must have arms comparable to those of their servants in order to ensure that the servants never become masters. Thus

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Federalist writer Noah Webster argued that America need not fear a standing army, since "the whole body of the people are armed, and constitute a force superior to any bands of regular troops that could be, on any pretense, raised in the United States." (*An Examination into the Leading Principles of the Federal Constitution Proposed by the Late Convention*

at 43, 1787). Thus James Madison, in

Federalist No. 46

, praised American's "advantage of being armed" which would furnish practical insurance against tyranny. The underlying theme of these writings is not amusement or sport, but the necessity that the people be at least as well armed as the government to which they grant powers.

Why, then, does Treasury propose to ban this list of firearms? What is improper about having a gas tube above rather than below the barrel, or a locking system patterned after the M-1 carbine? The only common theme that can be seen is that the firearms in question look military. We submit that a firearms ban motivated by the fact that given firearms are military would contradict the basic political judgments that underlay the Second Amendment -- that is, it represents the people's servants' deciding that they must be better armed than the people who empower and pay them -- that they are in some sense superior human beings to the "rabble" that pays their salaries and votes them power. To ban firearms merely because they look military is not only a reflection of this unconstitutional judgment -- it is a caricature of it.

¹ Without examining statutory history, the drafters proclaimed that "plinking" was simply not a "sporting purpose."

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