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Anti-Drug Assault Weapons Limitation Act of 1993

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**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET**

ROUTE SLIP

TO: Jose Cerda

Clarissa Cerda

Take necessary action ☐

Approval signature ☐

Comment ☐

Prepare reply ☐

Discuss with me ☐

For your information ☐

See remarks below ☐

FROM: Doug Steiger (x3386)

DS **DATE: 7/21/93**

REMARKS

S. 639 - Antidrug Assault Weapons Limitation Act

Attached for your review are Justice comments on a proposed Treasury report on S. 639 and on the bill itself. (The Treasury letter and the bill are also included.)

Since Justice does not object to the Treasury letter, we would like to proceed with clearing it. Do you have comments on the Treasury letter?

**CC: Peggy Young
Jim Duke
Cora Beebe
Jim Jukes**

**U. S. Department of Justice****Office of Legislative Affairs**

Office of the Assistant Attorney General

Washington, D.C. 20530

20 JUL 1993

Honorable Leon E. Panetta
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Panetta:

This letter responds to a request from the Office of Management and Budget for our views on a Department of the Treasury report regarding S. 639, the "Antidrug Assault Weapons Limitation Act of 1993." We note that H.R. 1472, which was introduced in the House by Congressman Schumer, is identical to Title I of S. 639.

While we support legislation such as this that is aimed at reducing the level of firearms violence in this country, we bring to your attention our concerns about this particular proposal that we feel impact on its ability to further that goal effectively. In this letter, we describe our areas of agreement with Treasury on this proposal, and provide our additional views on issues that Treasury has not addressed.

Proposed comments of the Department of Treasury

Title I

Title I of S. 639 is captioned the "Antidrug Assault Weapons Limitation Act of 1993." As Treasury notes, the proposed definition of "assault weapon" with reference to specific names of weapons may lead to circumvention of the law rather easily. Thus, we support Treasury's recommendation that covered weapons be described by type, rather than specific model name. We also fully support Treasury's recommendation that the proposed legislation provide regulatory authority to the Secretary of the Treasury to add other firearms to the list of covered weapons, as appropriate.

It is Treasury's view that the recordkeeping provision of the proposal would be unworkable and should be deleted from the bill. We defer to its views on this issue, based on its expertise in maintaining records under other federal firearms laws.

¹ We note that, according to the Drug Enforcement Administration, assault weapons comprise a relatively minor portion of the weapons it has seized in drug transactions since 1986.

Title II

We agree with Treasury's observation that Title II is largely duplicative of existing federal law. See, e.g., 18 U.S.C. § 1512 (tampering with a witness, victim or an informant) and 21 U.S.C. § 848(e)(1)(A) (intentional killing by a person in furtherance of significant drug trafficking). However, the second prong of 21 U.S.C. § 848(e)(1)(A) requires that the drug trafficking be in violation of 21 U.S.C. § 841(b)(1)(A) or 960(b)(1). Both of these latter provisions require sizable quantities of drugs, in keeping with the policy of using federal resources for major prosecutions involving sizable quantities of drugs. As currently drafted, proposed 18 U.S.C. § 36 has several technical problems. It requires the presence of a "group" and the term "major" is not defined. In order to avoid a challenge for vagueness, the term "major" would have to be defined or deleted. If defined at levels less than those set forth in 21 U.S.C. § 841(b)(1)(A) or 960(b)(1), then it would expand federal coverage over drug related murders. While we disfavor and do not recommend any expansion of federal coverage, the more sensible way to reach murders related to lower quantities of drug trafficking would be to amend 21 U.S.C. § 848(e)(1)(A). That provision, unlike Title II, contains a constitutional death penalty procedure. Accordingly, we support Treasury's opposition to Title II as it is presently drafted.

Title III

Treasury supports Section 301 of the proposal, which would create a new offense for stealing a firearm that has moved at any time in interstate commerce. We note that this provision would encompass almost any theft of a firearm and thus could impact significantly on federal law enforcement resources. Additionally, it is somewhat duplicative of 18 U.S.C. § 922(j), which makes it unlawful to "receive, conceal, store, barter, sell, or dispose of any stolen firearm" which is moving in, or has moved in, interstate commerce.²

We support Treasury's comments on the proposed provision to create an offense of smuggling weapons for the purpose of promoting drug trafficking or crimes of violence. We also support its position on the proposed amendment to 18 U.S.C. § 3583.

Additional concerns of the Department of Justice

1. As drafted, Title I of S. 639 and H.R. 1472 are "sunset" provisions, subject to automatic repeal three years after taking effect. During this time, the Attorney General is to complete a

² Even so, § 922(j) is in need of legislative clarification to ensure its applicability to any firearm that has moved in interstate commerce, regardless of whether the firearm was stolen before or after the interstate activity.

report on the statute's impact, if any, on violent and drug trafficking crime.

Aside from the prudence of criminalizing conduct for a three-year "test" period, we do not view the three-year period as adequate to permit a reliable assessment of its impact. For one thing, subsection (s)(2)(B) of the proposal purports to "grandfather in" all assault weapons that were lawfully possessed prior to the statute's effective date. As a result, during the three-year period, any statistics relating to the use of assault weapons in violent or drug trafficking crimes will have little significance since literally thousands of "grandfathered in" weapons will still be on the street.

2. Further, we are uncertain how the "grandfather" provision is to be enforced. It is consistent with the "grandfather" provision in 18 U.S.C. § 922(o), which proscribes the possession of machineguns. However, prior to the enactment of § 922(o), machineguns that were lawfully possessed were required to be registered under Title 26 of the United States Code. Thus, determining the applicability of § 922(o) to one in possession of a machinegun is a matter of public record. Since there is no registration requirement for lawfully owned assault-type weapons, there is virtually no way to ensure the lawfulness of one's possession prior to a certain date.³

3. The study that is required by the proposal should be conducted jointly by the Attorney General and the Secretary of the Treasury, with the assistance of Treasury's Bureau of Alcohol, Tobacco and Firearms.

4. There is no specific penalty provision for proposed 18 U.S.C. § 922(s), which proscribes the unlawful transfer or possession of an assault weapon. As a result, the penalty would be the five-year maximum sentence now prescribed in § 924(1)(D), which applies to one who "willfully violates any other provision of this chapter." In our view, the element of intent should be "knowing," as with other weapons possession offenses, rather than "willful," which generally is more difficult to prove. The proposal should be

³ One possible remedy is to redraft subsection (s)(2)(B) to except:

"(B) an otherwise lawful transfer or possession of an assault weapon that was manufactured in the United States or lawfully imported into the United States prior to the effective date of this subsection."

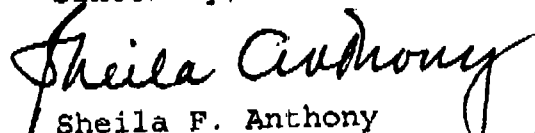
In this manner, the lawfulness of possession of a "grandfathered" assault weapon may be determined by reference to a public record.

4

amended accordingly.

We appreciate your seeking our views. Please let us know if we can be of further assistance.

Sincerely,


Sheila F. Anthony
Assistant Attorney General



GENERAL COUNSEL

DEPARTMENT OF THE TREASURY
WASHINGTON

The Honorable Joseph R. Biden
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter expresses the views of the Department of the Treasury on S. 639, "To make unlawful the possession of certain assault weapons, to establish a Federal penalty for drive-by shooting, and for other purposes." The Department supports title III of the bill. The Department also supports, with the technical modifications discussed below, titles I and II of the bill. We look forward to working with the Committee to address these concerns and to secure enactment of the bill.

TITLE I

Section 103 of the bill would make it unlawful to transfer, import, transport, ship, receive, or possess any assault weapon. Weapons for Federal and State agencies and weapons lawfully possessed prior to the effective date of the bill would be excepted. Section 102(a) would define "assault weapon" to mean nine specified models of firearms. Section 102(b) authorizes the Secretary of the Treasury, in consultation with the Attorney General, to recommend to the Congress the addition or deletion of firearms designated as assault weapons under section 102(a).

Because the section 102(a) definition of "assault weapon" is expressed in terms of the specific weapon names, the bill's prohibitions could easily be circumvented by a change in a weapon's name. This could be avoided by using a general description of the covered weapons (e.g., amending "Colt AR-15" to read "Colt AR-15 type." Furthermore, assuming the intent of the bill is to apply to all AK-47 type assault rifles, the description of these weapons as "Norinco, Mitchell, and Poly Technologies Avtomat Kalashnikovs" is incomplete; other variations of the AK-47 assault rifle exist, and more may be developed. We also note that the definition of assault weapons would not include sporterized versions of the listed firearms.

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If the intent of Title I is to restrict all semiautomatic assault rifles, the list of weapons is incomplete. The Administration's 1989 ban on the importation of nonsporting semiautomatic assault rifles identified over 40 models that fell within this category. All of the models are listed in the Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles, July 6, 1989. A copy of a list of these weapons is enclosed for your reference.

To ensure more effective implementation of the intended ban on assault weapons, the Department recommends that section 102(b) be revised to authorize the Secretary of the Treasury to issue regulations that ban additional models of firearms found by the Secretary to constitute weapons similar to those described in section 102(a).

With respect to assault weapons lawfully possessed prior to the effective date of the bill, the bill would require owners of such weapons to obtain and complete a Form 4473 within 90 days after publication of regulations implementing the bill. Subsequent transfers of the weapons also would be recorded on Form 4473. The apparent purpose in requiring the use of Form 4473 is to create a paper trail to facilitate tracing. The Department recommends that these requirements be deleted from the bill because they have no law enforcement value and would not enhance the ability of the Bureau of Alcohol, Tobacco and Firearms to trace such weapons. We also note that even if use of the form would facilitate tracing, the bill neither provides for Government access to the forms nor requires persons to produce the forms upon request. We also note that even if the bill provided for Government access to the forms by means of warrantless inspections, such a provision would not likely be enforceable against nonlicensees as the Federal Courts generally do not uphold warrantless inspections of nonregulated individuals.

TITLE II

Section 202 would make it a Federal offense to cause grave risk to human life or to kill a person by firing a weapon into a group of two or more persons in furtherance of, or to escape detection of, a major drug offense with intent to intimidate, harass, injure, or maim. The offense of causing grave risk to human life would be punishable by imprisonment for a term not exceeding 25 years; if death resulted, the offense would be punishable by death or by imprisonment up to life.

-3-

The proposed new offenses are unnecessary because they are duplicative of current law (see 18 U.S.C. 844(h) and 924(c)). Not only are the existing offenses more easily proved than the proposed offenses, but they also provide mandatory minimum terms of imprisonment upon conviction. We note that the death penalty provision does not provide any procedures or standards, and we defer to the Department of Justice concerning the constitutionality of such a provision in the absence of a general Federal death penalty statute.

TITLE III

Section 301 would amend 18 U.S.C. 924 to create a new offense for stealing a firearm, punishable by imprisonment for a term of 2 to 10 years. The Department supports this provision because it would close a gap in current law. Currently, 18 U.S.C. 922(i) punishes the receipt or transportation of stolen firearms, and 18 U.S.C. 659 punishes the theft of any goods, including firearms, from an interstate or foreign shipment. There is, however, no offense specifically directed at the theft of firearms.

Section 301 would also amend section 924 to create a new offense, punishable by up to 10-years' imprisonment, for smuggling firearms into the United States for the purpose of promoting drug trafficking or crimes of violence. The Department supports the proposed offense because it addresses an anomaly in current law. Currently 18 U.S.C. 922(l) makes it a 5-year offense to import certain firearms into the United States, and 18 U.S.C. 924(h) makes it a 10-year offense to travel interstate or from a foreign country to purchase a firearm with intent to engage in conduct constituting a Federal or State drug offense or a crime of violence. There is no reason to treat traveling to acquire a firearm for illegal drug trafficking purposes any differently from importing or smuggling a firearm into the United States for the same purpose.

Section 302 would amend 18 U.S.C. 3583 to provide for the imprisonment of persons sentenced to supervised release who violate a condition of their release concerning the possession of firearms. The Department supports this provision, which is patterned after 18 U.S.C. 3565(b), which provides for the same treatment of persons on probation.

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The Office of Management and Budget has advised that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely,

Dennis I. Foreman
Acting General Counsel

Enclosure

RIFLES RECOMMENDED TO BE DENIED IMPORTATIONAKS Variants

AK 47 type
AK47S type
AK74 type
AKS type
AKM type
AKMS type
ARM type
84S type
84S1 type
84S3 type

86S type
867S type
867S type
Galil type
Type 56 type
Type 56S type
Valmet M76 type
Valmet M78 type
M76 counter sniper type

FAL Variants

FAL type
L1A1A type
SAR 48 type

Other

AUG type
FNC type
Uzi carbine

Algimec AGM1 type
AR180 type
Australian Automatic Arms SAR type*
Beretta AR70 type
Beretta BM59 type
CIS SR88 type
HK91 type
HK93 type
HK94 type
G3SA type
K1 type
K2 type
AR100 type
M14S type
MAS223 type
SIG 550SP type
SIG 551SP type
SKS with detachable magazine

* The Australian Automatic Arms Model SP-20 will be conditionally imported to determine if it is of a type generally recognized as particularly suitable for sporting purposes.

103D CONGRESS
1ST SESSION

S. 639

To make unlawful the possession of certain assault weapons, to establish
a Federal penalty for drive-by shootings, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 23 (legislative day, MARCH 3), 1993

Mr. DECONCINI (for himself, Mr. SIMON, Mr. PEYER, Mr. BUMPERS, Mr.
KOEHL, Mr. BRADLEY, Mr. CHAFFE, Mr. SARBANES, Mr. MOYNIHAN, and
Mr. WARNER) introduced the following bill; which was read twice and re-
ferred to the Committee on the Judiciary

A BILL

To make unlawful the possession of certain assault weapons,
to establish a Federal penalty for drive-by shootings,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 TITLE I—ASSAULT WEAPONS

4 SECTION 101. SHORT TITLE.

5 This title may be cited as the "Antidrug Assault
6 Weapons Limitation Act of 1993".

1 **SEC. 102. DEFINITIONS.**

2 (a) **IN GENERAL.**—Section 921(a) of title 18, United
3 States Code, is amended by adding at the end the follow-
4 ing new paragraphs:

5 “(29) The term ‘assault weapon’ means any of the
6 firearms known as—

7 “(A) Norinco, Mitchell, and Poly Technologies
8 Avtomat Kalashnikovs (all models);

9 “(B) Action Arms Israeli Military Industries
10 UZI and Galil;

11 “(C) Beretta AR-70 (SC-70);

12 “(D) Colt AR-15 and CAR-15;

13 “(E) Fabrique Nationale FN/FAL, FN/LAR,
14 and FNC;

15 “(F) MAC 10 and MAC 11;

16 “(G) Steyr AUG;

17 “(H) INTRATEC TEC-9; and

18 “(I) Street Sweeper and Striker 12.

19 “(30) The term ‘form 4473’ means the form pre-
20 scribed by the Secretary in section 178.124 of the Code
21 of Regulations as of the date of enactment of this para-
22 graph, as that form or paragraph may be amended, or
23 a successor form or regulation, or the equivalent of such
24 a form.”.

25 (b) **RECOMMENDATIONS OF THE SECRETARY.**—

1 Chapter 44 of title 18, United States Code, is
2 amended—

3 (1) by adding at the end the following new sec-
4 tion:

5 **“§ 931. Additional assault weapons**

6 “The Secretary, in consultation with the Attorney
7 General, may recommend to the Congress the addition or
8 deletion of firearms designated as assault weapons under
9 section 921(29).”; and

10 (2) in the chapter analysis by adding at the end
11 the following new item:

“931. Additional assault weapons.”.

12 **SEC. 103. UNLAWFUL ACTS.**

13 Section 922 of title 18, United States Code, is
14 amended by adding at the end the following new sub-
15 sections:

16 “(s)(1) Except as provided in paragraph (2), it shall
17 be unlawful for a person to transfer, import, transport,
18 ship, receive, or possess an assault weapon.

19 “(2) This subsection does not apply with respect to—

20 “(A) the transfer, importation, transportation,
21 shipping, and receipt to or by, or possession by or
22 under, authority of the United States or any depart-
23 ment or agency thereof or of any State or any de-
24 partment, agency, or political subdivision thereof, of
25 an assault weapon; or

1 “(B) a lawful transfer, transportation, shipping,
2 receipt, or possession of an assault weapon that was
3 lawfully possessed before the effective date of this
4 subsection.

5 “(t)(1) It shall be unlawful for a person to sell, ship,
6 or deliver an assault weapon to a person who does not
7 fill out a form 4473 in connection with the purchase of
8 the assault weapon.

9 “(2) It shall be unlawful for a person to purchase,
10 possess, or accept delivery of an assault weapon unless the
11 person has filled out a form 4473 in connection with the
12 purchase of the assault weapon.

13 “(3) If a person purchases an assault weapon from
14 anyone other than a licensed dealer, both the purchaser
15 and the seller shall maintain a record of the sale on the
16 seller's original copy of form 4473.

17 “(4) An owner of an assault weapon on the effective
18 date of this subsection who requires retention of form
19 4473 under this subsection shall, within 90 days after
20 publication of regulations by the Secretary under para-
21 graph (5), request a copy of form 4473 from a licensed
22 dealer in accordance with those regulations.

23 “(5) The Secretary shall, within 90 days after the
24 date of enactment of this subsection, prescribe regulations

1 for the request and delivery of form 4473 under paragraph
2 (4).”.

3 SEC. 104. PENALTIES.

4 Section 924 of title 18, United States Code, is
5 amended—

6 (1) in subsection (c) by inserting “and if the
7 firearm is an assault weapon, to imprisonment for
8 10 years,” after “sentenced to imprisonment for five
9 years,”; and

10 (2) by adding at the end the following new sub-
11 section:

12 “(i) A person who knowingly violates section 922(t)
13 shall be fined not more than \$1,000 (in accordance with
14 section 3571(e)), imprisoned not more than 6 months, or
15 both.”.

16 SEC. 105. DISABILITY.

17 Section 922(g)(1) of title 18, United States Code, is
18 amended by inserting “or a violation of section 922(t)”
19 before the semicolon at the end.

20 SEC. 106. STUDY BY THE ATTORNEY GENERAL.

21 (a) STUDY.—The Attorney General shall investigate
22 and study the effect of this Act and the amendments made
23 by this Act and in particular shall determine their impact,
24 if any, on violent and drug trafficking crime. The study

1 shall be conducted over a period of 18 months, commencing 12 months after the date of enactment of this Act.

3 (b) REPORT.—Not later than 30 months after the date of enactment of this Act, the Attorney General shall 5 prepare and submit to Congress a report setting forth in 6 detail the findings and determinations made in the study 7 under subsection (a).

8 SEC. 107. EFFECTIVE DATE.

9 This title and the amendments made by this title—

10 (1) shall become effective on the date that is 30 11 days after the date of enactment of this Act; and

12 (2) are repealed effective as of the date that is 13 3 years after the effective date.

14 TITLE II—INDISCRIMINATE USE 15 OF WEAPONS TO FURTHER 16 DRUG CONSPIRACIES

17 SEC. 201. SHORT TITLE.

18 This title may be cited as the “Drive-By Shooting 19 Prevention Act of 1993”.

20 SEC. 202. DRIVE-BY SHOOTING.

21 (a) IN GENERAL.—Chapter 2 of title 18, United 22 States Code, is amended by adding at the end the following new section:

24 “§ 36. Drive-by shooting

25 “(a) OFFENSE AND PENALTIES.—

1 “(1) Whoever, in furtherance or to escape detection of a major drug offense listed in subsection 2 (b) and, with the intent to intimidate, harass, injure, 3 or maim, fires a weapon into a group of two or more 4 persons and who, in the course of such conduct, 5 causes grave risk to any human life shall be punished 6 by a term of no more than 25 years, or by fine 7 as provided under this title, or both.

9 “(2) Whoever, in furtherance or to escape detection of a major drug offense listed in subsection 10 (b) and, with the intent to intimidate, harass, injure, 11 or maim, fires a weapon into a group of two or more 12 persons and who, in the course of such conduct, kills 13 any person shall, if the killing—

14 “(A) is a first degree murder as defined in 15 section 1111(a) of this title, be punished by 16 death or imprisonment for any term of years or 17 for life, fined under this title, or both: or

18 “(B) is a murder other than a first degree 19 murder as defined in section 1111(a) of this 20 title, be fined under this title, imprisoned for 21 any term of years or for life, or both.

22 “(b) MAJOR DRUG OFFENSE DEFINED.—A major 23 drug offense within the meaning of subsection (a) is one 24 of the following:

1 “(1) a continuing criminal enterprise, punishable
2 able under section 403(e) of the Controlled Sub-
3 stances Act (21 U.S.C. 848(e));

4 “(2) a conspiracy to distribute controlled sub-
5 stances punishable under section 406 of the Con-
6 trolled Substances Act (21 U.S.C. 846) or punish-
7 able under section 1013 of the Controlled Sub-
8 stances Import and Export Control Act (21 U.S.C.
9 963); or

10 “(3) an offense involving major quantities of
11 drugs and punishable under section 401(b)(1)(A) of
12 the Controlled Substances Act (21 U.S.C.
13 841(b)(1)(A)) or section 1010(b)(1) of the Con-
14 trolled Substances Import and Export Act (21
15 U.S.C. 960(b)(1)).”.

16 (b) TECHNICAL AMENDMENT.—The chapter analysis
17 for chapter 2 of title 18, United States Code, is amended
18 by adding at the end the following new item:

“36. Drive-by shooting.”.

19 TITLE III—MISCELLANEOUS 20 FIREARMS OFFENSES

21 SEC. 301. STEALING AND SMUGGLING OF FIREARMS.

22 Section 924 of title 18, United States Code, is
23 amended by adding at the end the following new sub-
24 sections:

1 “(i) A person who steals a firearm that is moving as,
2 is a part of, or has moved in interstate or foreign com-
3 merce shall be imprisoned not less than 2 nor more than
4 10 years and may be fined under this title.

5 “(j) A person who, with the intent to engage in or
6 to promote conduct that—

7 “(1) is punishable under the Controlled Sub-
8 stances Act (21 U.S.C. 801 et seq.), the Controlled
9 Substances Import and Export Act (21 U.S.C. 951
10 et seq.), or the Maritime Drug Law Enforcement
11 Act (46 U.S.C. App. 1901 et seq.);

12 “(2) violates a State law relating to a controlled
13 substance (as defined in section 102 of the Con-
14 trolled Substances Act (21 U.S.C. 802)); or

15 “(3) constitutes a crime of violence (as defined
16 in subsection (e)(3));

17 smuggles or knowingly brings into the United States a
18 firearm, or attempts to do so, shall be imprisoned not
19 more than 10 years, fined under this title, or both.”.

20 SEC. 302. MANDATORY REVOCATION OF SUPERVISED RE- 21 LEASE FOR POSSESSION OF A FIREARM

22 Section 3583 of title 18, United States Code, is
23 amended by adding at the end the following new sub-
24 section:

1 “(h) MANDATORY REVOCATION OF SUPERVISED RE-
2 LEASE FOR POSSESSION OF A FIREARM.—If the court has
3 provided, as a condition of supervised release, that the de-
4 fendant refrain from possessing a firearm (as defined in
5 section 921), and if the defendant is in actual possession
6 of such a firearm at any time prior to the expiration or
7 termination of a term of supervised release, the court,
8 after a hearing pursuant to the provisions of the Federal
9 Rules of Criminal Procedure that are applicable to proba-
10 tion revocation, shall—

11 “(1) revoke the term of supervised release; and
12 “(2) subject to subsection (e)(3), require the
13 defendant to serve in prison all or part of the term
14 of supervised release without credit for time pre-
15 viously served on postrelease supervision.”.

○