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Ammunition Clips

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ASSAULTS

Dennis K. Burke 03/18/97 11:15:41 PM

Record Type: Record

To: Bruce N. Reed/OPD/EOP, Elena Kagan/OPD/EOP
cc: Leanne A. Shimabukuro/OPD/EOP
Subject: Assault Weapon Clips

Here is my better understanding of the particular facts on the clips issue. Then, I guess we should talk about the Dingell issue when you want to.

The 1994 Crime Bill restricted the manufacture, transfer, and possession of certain semiautomatic assault weapons and "large capacity ammunition feeding devices."

The Act defined "large capacity ammunition feeding device" to mean:

"A magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the Act that has the capacity of, or that can be readily restored or converted to accept more than 10 rounds of ammunition."

So the definition, itself, grandfathers in clips that were manufactured before the effective date. This definition was inserted into the bill by Dingell during conference.

However, ATF originally interpreted this provision to only to such devices lawfully possessed in the United States on or before enactment.

Two suits were filed against ATF by clip manufactures over their interpretation of this provision. Dingell was very vocal about this interpretation and I can go into that background w/ you. In addition, the Associate Attorney General informed ATF that the Civil Division would not defend ATF's interpretation in court.

As a result, in July 1996, ATF reinterpreted the clip provision through a temporary rule in the Federal Register acknowledging that pre-ban clips could be imported. They did, however, require importers to present reasonable evidence that the devices were manufactured on or before the Crime Bill's date of enactment.

Treasury informs me that since then and as of March 1, 1997, importation records indicate that 157,236 large capacity magazines from a variety of countries have been imported, through 21 approved permits. 83 permits seeking importation of 2,112,441 large capacity magazines have been approved. According to Treasury an importer receives a one year permit to bring in a certain number of clips, but the importer might not use all of this permit authority.

Feinstein now claims that these clips are coming in from China and it is because of the Dingell amendment.

Since the Tiananmen Square crackdown in 1989, **exports** of defense articles to China have been prohibited. State and Treasury regulations state that it is the U.S. policy to prohibit **imports** of defense articles that are subject to an U.S. arms **export** embargo. Before 1994, China was exempted from this policy.

On May 26, 1994, the President revoked China's waiver --- so that no guns or clips could legally come into the United States from China.

However, Senator Craig, from the great State of Idaho, added an amendment to an appropriations bill, effective July 25, 1994, that prevented appropriated funds from being used to bar the importation of previously importable munitions from China that were **in transit** as of May 26, 1994.

According to Treasury, 35,000 large capacity magazines were imported from China under the Craig amendment -- but none have come in since the Crime Bill's implementation date, September 13, 1994.

So, yes clips are coming into the United States because of the Dingell provision, but no they are not coming in from China (at least according to the Treasury Dept, the same folks who forgot to tell us that they had already announce the President's youth gun interdiction initiative a year before he did).

FACSIMILE COVER SHEET
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Page 1 of 4

TO:

LeAnn Shimakuro

FAX:

456-7028

FROM:

SASAN Ginsburg

SUBJECT:

Ammo Feeding Devices

MESSAGE:

Importation of Large Capacity Ammunition Feeding Devices

- Q. Since the assault weapons ban was passed on September 13, 1994 as part of Public Law 103-322, the Violent Crime Control and Law Enforcement Act of 1994 ("the Act"), why are any large capacity ammunition feeding devices magazines ("magazines") able to be legally imported?**
- A. The Act defines "large capacity ammunition feeding devices" to exclude those devices manufactured before the date of enactment of the Act. The Department of Justice concluded that ATF does not have authority to preclude the importation of magazines manufactured before the date of enactment. Therefore, magazines manufactured on or before September 13, 1994 may be lawfully imported.**
- Q. Since the Act was passed, has there been a change in this interpretation?**
- A. ATF initially interpreted the statute to restrict the importation of magazines after the date of enactment of the Act. The Department of Justice found that this interpretation, which was challenged in two lawsuits, was not supportable as a matter of law. Based on guidance from the Department of Justice, ATF changed its interpretation so that the relevant fact was the date of a magazine's manufacture and not the date of importation.**
- Q. Was this explanation provided to interested members of Congress?**
- A. Yes. Briefings were provided to members or their staffs. ATF provided copies of the April 6, 1995, regulations and the temporary July 29, 1996 regulations to Congress as required by 5 U.S.C. 801(a). (Final regulations are being drafted.)**
- Q. Are there any procedural requirements attached to importation?**
- A. Yes. ATF regulations require importers to complete an import application, provide relevant information and present reasonable evidence -- either physical or documentary -- that the magazines in question were manufactured before the enactment of the Act.**
- Q. Have any import permits for magazines manufactured on or before September 13, 1994 been denied because of lack of supporting documentary evidence called for by ATF's July 29, 1996 regulations?**

It is estimated that approximately 20 permits have been denied. No information is available on the name of the importer, or the description of the large capacity magazines, if the permit application was denied for lack of sufficient documentation. But it is highly likely that these permits would have been resubmitted upon obtaining sufficient documentation.

Q. How many large capacity magazines have been imported since the effective date of the Act?

A. As of March 1, 1997, importation records indicate that 157,236 large capacity magazines from a variety of countries have been imported, through 21 approved permits. 83 permits seeking importation of 2,112,441 large capacity magazines have been approved.

Q. From what countries were these magazines imported and where were they manufactured?

A. The magazines were manufactured in and imported from the following countries: Argentina, Austria, Belgium, Brazil, Canada, Chile, England, Germany, Haiti, India, Israel, Italy, Morocco, Nicaragua, Portugal, Spain, Sweden, Taiwan, Zimbabwe.

Q. Are the number of import applications for large capacity magazines increasing?

A. The number of import applications for large capacity magazines has remained fairly constant since the implementation of the temporary rule on July 29, 1996.

Q. How many large capacity magazines have been sold domestically since the implementation of the Act?

A. It is unknown and the information is not ascertainable because sales of large capacity magazines are not required to be recorded under the Gun Control Act.

Q. Are U.S. manufacturers and importers known to have large stores of magazines manufactured on or before September 13, 1994?

A. Based on advertisements in firearms publications, dealers in firearms appear to have large quantities of high capacity magazines on hand.

Q. Are there special restrictions that apply to China on importation of large capacity magazines?

A. Yes. *Exports* of defense articles to China have been prohibited since 1989, after the Tiananmen Square crackdown. The State Department's International Traffic In Arms regulations (ITAR) and Treasury's regulations on importation of arms, ammunition and implements of war, state that it is the *policy* of the United States to prohibit *imports* of defense articles from countries that are subject to an U.S. arms *export* embargo. However, the President has authority under the Arms Export Control Act to control the export and import of defense articles for foreign policy reasons, and before May 1994, *China was exempted from the policy* of prohibiting imports from countries that are subject to U.S. arms *export* embargo.

On May 26, 1994 (during the period of the decision on China's Most Favored Nation status), President Clinton revoked this exemption under the authority of the Arms Export Control Act and the terms of Executive Order 11958, which gives authority to the Secretary of the Treasury to control imports of arms under the Arms Export Control Act, subject to foreign policy guidance from the Secretary of State.

Q. What is the legal relationship if any between the 1994 effective ban on the importation of large capacity magazines and the 1989 ban on the importation of assault weapons?

A. The two bans are legally unrelated. The Gun Control Act of 1968 prohibits the importation of firearms unless they are "*generally recognized as particularly suitable for or readily adaptable to sporting purposes.*" In July 1989, ATF applied this statute to permanently ban from importation 41 models of semiautomatic assault rifles that did not meet the sporting purposes test. These included semiautomatic versions of machine guns, possessing military characteristics.

Q. Have there been any exceptions made to the May 26, 1994 ban all imports of arms and ammunition from China?

A. Yes. Senator Craig sponsored an amendment (Sec. 609, Public Law 103-317), effective July 25, 1994, that prevented appropriated funds from being used to bar the importation of previously importable munitions from China that were *in transit* as of May 26, 1994.

Q. Were any large capacity magazines imported from China under the Craig amendment?

A. Yes. 35,000. None came in after the Act's implementation, September 13, 1994.

Q. Have there been any other exceptions made to the May 26, 1994 ban on imports of arms and ammunition from China?

A. The President can make specific one-time exemptions, or waivers, from the import ban, subject to guidance from the departments of State and Defense. Limited exemptions have been granted, in connection with DOD defense needs.

Additional questions from Sen. Feinstein's staff, 4/1/97:

Q. What is the capacity of the clips imported under the Craig amendment?

Q. (?) What is the total number of rounds in these clips?

Q. What are the names of the manufacturers that exported these clips?

DRAFT

Importation of Large Capacity Ammunition Feeding Devices

- Q. Since the assault weapons ban was passed on September 13, 1994 as part of Public Law 103-322, the Violent Crime Control and Law Enforcement Act of 1994 ("the Act"), why are any large capacity magazines (magazines with more than ten rounds) able to be legally imported?
- A. The magazine definition for purposes of the Act did not include magazines manufactured on or before the effective date of the law. Therefore, magazines manufactured on or before September 13, 1994, may be lawfully imported.
- Q. Since the Act was passed, has there been a change in this interpretation?
- A. ATF initially interpreted the magazine definition to restrict magazines located abroad, regardless of their date of manufacture. This interpretation, which was challenged in two lawsuits, was questionable in view of the plain language of the statute, and was not supported by the Department of Justice.
- Q. Was this explanation provided to interested members of Congress?
- A. Yes. ATF provided copies of the April 6, 1995, regulations and the temporary July 29, 1996 regulations to Congress as required by 5 U.S.C. 801(a). (Final regulations are being drafted.)
- Q. Are there any procedural requirements attached to importation?
- A. ATF regulations require an importation permit and a reasonable degree of evidence of pre-ban manufacture.
- Q. How many large capacity magazines have been imported since the effective date of the Act?
- A. As of March 1, 1997, importation records indicate that 157,236 large capacity magazines from a variety of countries have been imported, through 21 approved permits. 83 permits seeking importation of 2,112,441 large capacity magazines have been approved.
- Q. Are the number of import applications for large capacity magazines increasing?
- A. The number of import applications for large capacity magazines has remained fairly constant since the implementation of the temporary rule on July 29, 1996.

DRAFT**Importation of Large Capacity Ammunition Feeding Devices From China**

- Q. Are there special restrictions that apply to China on importation of large capacity magazines?**
- A.** Yes. *Exports* of defense articles to China have been prohibited since 1989, after the Tiananmen Square crackdown. The State Department's International Traffic In Arms regulations (ITAR) and Treasury's regulations on importation of arms, ammunition and implements of war, state that it is the *policy* of the United States to prohibit *imports* of defense articles from countries that are subject to an U.S. arms *export* embargo. However, the President has authority under the Arms Export Control Act to control the export and import of defense articles for foreign policy reasons, and before May 1994, *China was exempted from the policy* of prohibiting imports from nations banned from exporting arms for foreign policy reasons.
- On May 26, 1994 (during the period of the decision on China's Most Favored Nation status), President Clinton revoked this exemption under the authority of the Arms Export Control Act and the terms of Executive Order 11958, which gives authority to the Secretary of the Treasury to control imports of arms under the Arms Export Control Act, subject to foreign policy guidance from the Secretary of State.
- Q. Have there been any exceptions made to the May 26, 1994 ban all imports of arms and ammunition from China?**
- A.** Yes. Senator Craig sponsored an amendment (Sec. 609, Public Law 103-317), effective July 25, 1994, that prevented appropriated funds from being used to bar the importation of previously importable munitions from China that were *in transit* as of May 26, 1994.
- Q. Were any large capacity magazines imported from China under the Craig amendment?**
- A.** [answer not yet available]
- Q. Have there been any other exceptions made to the May 26, 1994 ban on imports of arms and ammunition from China?**
- A.** The President can make specific one-time exemptions, or waivers, from the import ban. Such exceptions to the policy of denial may be made subject to the guidance of the departments of State and Defense on matters affecting world peace and the external security and foreign policy of the United States. Very limited exemptions have been requested and granted. These have been in connection with DOD defense needs, and were unrelated to civilian arms.

9-15-97

B. Reed

Copied

Crime-Ammo
clips

HIGH CAPACITY MAGAZINES (HCMs)

Reed

COS

Torres

From Sen
Feinstein
Clena

ISSUE:

Under the 1994 Crime Bill, it was made unlawful to transfer or possess "large capacity ammunition feeding devices," defined as magazines with the capacity to hold more than 10 rounds of ammunition, with exceptions made for law enforcement and other governmental use.

A grandfather clause was added stating that this restriction "shall not apply to the possession or transfer of any large capacity ammunition feeding device otherwise lawfully possessed on or before the date of enactment of this subsection," (September 13, 1994).

Additionally, the term 'large capacity ammunition feeding device' was defined as:

"(A) a magazine, belt, drum, feed strip, or similar device manufactured after the date of enactment of the Violent Crime Control and Law Enforcement Act of 1994 that has a capacity of, or that can be readily restored or converted to accept more than 10 rounds of ammunition; (B) does not include an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition."

ATF Prohibition of Importation of HCMs Challenged:

The ATF originally interpreted the grandfather clause as applying only to such magazines that were lawfully possessed in the United States on or before September 13, 1994. Under that interpretation, ATF prohibited importation of these devices. ATF's interpretation was challenged by several Members of Congress, the firearms industry, and gun-owner groups, claiming that the intent of Congress was to apply the grandfather clause to any magazine manufactured, domestically or abroad, on or before September 13, 1994.

ATF issued new regulations in June of 1996 that provided that large capacity magazines manufactured on or before September 13, 1994 are eligible for importation to the United States. The BATF began allowing HCMs to be imported into the U.S. after July 1996. They provided the following statistics on applications and importations since then:

From July 1996 to April 1997:

Number of permits issued for HCMs	77
Number of HCMs approved for importation	1,815,399
Number of HCMs imported	159,578

■ MILLIONS OF HCMs AVAILABLE FOR IMPORT

ATF estimates that the number of HCMs available for importation under the current grandfather clause may be in the millions, including those that are in surplus military stockpiles around the world. Many date back to World War II.

■ DATE OF MANUFACTURE IMPOSSIBLE TO VERIFY

ATF has no way of determining the date of manufacture of HCMs, but relies on documentation from the company. The date of manufacture must be included in import documentation.

■ INVESTIGATIONS ABROAD ARE DIFFICULT TO CONDUCT

If BATF officials are made aware of possible violations in a foreign country, they can utilize the international arms of the FBI or State Department to investigate. **However, there has never been an investigation of international producers of HCMs.** An unidentified ATF official is quoted in a Los Angeles Times interview saying that it is *"impractical for the government to conduct investigations abroad to determine the date of manufacture of these foreign clips."*

■ HUNDREDS OF THOUSANDS OF DOMESTICALLY MANUFACTURED HCMs IN CIRCULATION

Although no firm estimates exist on the number of domestically manufactured HCMs in circulation, ATF estimates the number to be "in the high hundreds of thousands." News reports indicate that, prior to enactment of the 1994 law, domestic magazine manufacturers beefed up their stockpiles of HCMs in anticipation of the ban.

- For example, according to the LA Times, Calico Light Weapons Systems in Bakersfield, CA produced so many high capacity magazines that, as of April 1997, they still had 6,000 on hand.

■ NO REGULATION OF AMMUNITION MAGAZINE INDUSTRY

There is no regulation of the ammunition magazine industry in the United States. Magazine manufacturers are not required to file disclosures, reports, or provide any documentation to Federal agencies to indicate compliance with the 1994 Crime Bill. Therefore ATF has no legal vehicle to inspect manufacturers. The ATF does not even know how many manufacturers are operating in the United States.