

Comment on Proposed Rules on Categories i-ii-iii by Depts. of State and Commerce John Lindsay-Poland, Global Exchange

The below comment on the proposed rules by the Departments of State and Commerce supplements the comments submitted by the American Bar Association/Security Assistance Monitor and by Amnesty International USA, which we support. This comment focuses on the proposed criterion of wide retail availability for firearms and munitions proposed for transfer from the USML to the Commerce Department, and includes brief comments about inter-agency review and about risks of criminal use.

The State Department proposed rule states that those weapons that would stay on the USML “are inherently for military end use,” adding that the items to be removed from the USML “do not meet this standard, including many items which are widely available in retail outlets in the United States and abroad.” (p. 5) One State Department official was quoted in a press report about the proposed rule: “We kind of refer to it as the Walmart rule. If it’s like something you can buy at a Walmart, why should we have control?”¹

The Commerce Department’s description of criteria for items to be moved off of the USML concludes: “Thus, the scope of the items described in this proposed rule is essentially commercial items widely available in retail outlets and less sensitive military items.” (p. 4) It adds that: “There is a significant worldwide market for firearms in connection with civil and recreational activities such as hunting, marksmanship, competitive shooting, and other non-military activities.” (pp. 6-7) However, the examples given here are not from prospective importing nations, but from the United States:

“Because of the popularity of shooting sports in the United States, for example, many large chain retailers carry a wide inventory of the firearms described in the new ECCNs for sale to the general public. Firearms available through U.S. retail outlets include rim fire rifles, pistols, modern sporting rifles, shotguns, and large caliber bolt action rifles, as well as their ‘parts,’ ‘components,’ ‘accessories’ and ‘attachments.’” (p. 7)

The retail availability in the United States should not be a criterion, since this is not the market to which exports treated by the proposed rule will be directed. Moreover, the U.S. retail firearms market is qualitatively and quantitatively different from nearly every market in the world: the United States, with 4.4% of the world’s population,² comprises more than 45% of the world’s firearms in civilian possession.³

In addition, the statement neglects another significant portion of the “worldwide market for firearms”: criminal organizations, illegal armed groups, and armed security forces that commit human rights violations.

In many countries, the retail availability of all firearms is substantially limited. In Mexico, for example, there is only one retail outlet in the entire country for the legal purchase of any kind of firearm.⁴ In China, firearm purchases are banned for most people, and private gun ownership is almost unheard of.⁵ In the vast majority countries, according to one of the few studies of firearms regulations, “there is a presumption against civilians owning

firearms unless certain conditions and requirements are met.”⁶

Belize, Colombia, Israel, Japan, Kenya, Turkey, and United Kingdom do not permit any civilian use of some or all types of semi-automatic firearms proposed for removal from the USML, and so cannot be said to have any retail availability of these prohibited firearms.⁷ Other nations, including Australia, Canada, Croatia, India, Lithuania, New Zealand, South Africa, Switzerland apply special restrictions to civilian possession of semi-automatic firearms, such as proof that they are needed for self-defense, and so it cannot be said that these firearms are “widely available in retail outlets” there. We emphasize that these examples are from only a selected sample of 28 countries; a full accounting of countries where there is only limited or any retail availability of semi-automatic firearms would certainly show many more.⁸ Brazil also prohibits “assault weapons” for civilian purchase, while Chile and Colombia prohibit civilian possession of semi-automatic weapons entirely.⁹

Moreover, within the United States, semi-automatic rifles and high-capacity magazines such as those proposed to be removed from the USML are prohibited for retail sale in six states and the District of Columbia.

Magazines with a capacity of more than 10 rounds are not permitted for civilians in Australia.¹⁰ Brazil, France, Romania, Slovenia, Spain, and Turkey do not permit purchase by ordinary civilians of high-capacity magazines.¹¹ DDTC policy has reportedly excluded export of high-capacity magazines except to military and law enforcement end users,¹² but nothing in the proposed rule indicates that the Department of Commerce would enact such a policy.

Certain types of handguns and certain calibers of firearms that are included in Category I are also prohibited and not available for retail purchase in some countries. In the Dominican Republic, for example, “certain firearms are considered ‘war weapons’ and can only be used by government forces, including .45 calibre pistols [and] rifles,” according a Small Arms Survey study,¹³ while Spain prohibits civilian purchase of firearms with a caliber of 20 mm or higher, which are considered to be “designed for war use.”¹⁴ More types – in some cases all types - of handguns are prohibited for civilian purchase in Belize, Canada, Colombia, Japan, Kazakhstan, the Russian Federation, the United Kingdom, and Venezuela.¹⁵

That purchase and possession of certain types firearms and ammunition are permitted under national legislation does not necessarily indicate that these items are either widely available or feasible for most people to obtain. In addition to prohibitions or restrictions on retail availability of types of firearms, many countries deeply restrict retail availability of all firearms through licensing requirements, which are often extensive and time-consuming. In India, for example, obtaining a license to acquire a firearm requires the applicant to demonstrate training in use of a gun, and often takes years.¹⁶ Japan requires gun buyers to go through 12 processes before purchasing any type of firearm.¹⁷

States impose limitations on the retail availability, types of firearms that may be legally

purchased, and licensing process for parties seeking to purchase a firearm because they recognize that guns are not like ordinary commercial items that can be purchased at a store. In many countries, legal markets for firearms blend with illegal markets in vast grey areas of stolen and diverted weapons, and of private security companies. The potential and actual negative consequences of the ill use of such firearms are devastating.¹⁸ A coherent, ethical, and politically strategic approach to firearm exports would increase controls to help reduce violent harm by both state and non-state actors that will more easily acquire them under the proposed rules.

Processes for gun exports reflect substantive priorities and as such are integral to policy. The National Sports Shooting Foundation (NSSF) claims that under the proposed rule, “Applications would go through the same interagency review process, including by the Defense Department and the State Department’s human rights and other experts.”¹⁹ However, the proposed rules do not articulate any requirement for such a review by State Department experts on human rights and criminal organizations. If that is the proposers’ intent, the rule should state it clearly, and spell out the scope of license applications subject to such review, concurrences required, specifying from which bureaus and agencies, and the competencies of experts who shall conduct reviews.

¹ David Sherfinski, “Trump officials to roll back rules on some gun exports,” *The Washington Times*, May 1, 2018, <https://m.washingtontimes.com/news/2018/may/1/trump-officials-to-roll-back-rules-on-some-gun-exp/>. It should also be noted that Walmart does not operate in more than 100 nations (see: <https://corporate.walmart.com/our-story/our-locations> and that in the United States Walmart does not sell semi-automatic assault rifles, high capacity magazines, or even (except in Alaska) handguns. See: <https://news.walmart.com/2018/02/28/walmart-statement-on-firearms-policy>.

² <https://www.census.gov/popclock/>

³ Aaron Karp, *Estimating Global Civilian-Held Firearms Numbers*, Small Arms Survey, June 2018, at: <http://www.smallarmssurvey.org/fileadmin/docs/T-Briefing-Papers/SAS-BP-Civilian-Firearms-Numbers.pdf>

⁴ Kate Linthicum, “There is only one gun store in all of Mexico. So why is gun violence soaring?” *The Los Angeles Times*, May 24, 2018, <https://www.latimes.com/world/la-fg-mexico-guns-20180524-story.html>.

⁵ Ben Blanchard, “Difficult to buy a gun in China, but not explosives,” Reuters, October 2, 2015, at: <https://www.reuters.com/article/uk-china-security-idUSKCN0RV5QV20151002>.

⁶ Sarah Parker, “Balancing Act: Regulation of Civilian Firearm Possession,” chapter 9 in *States of Security: Small Arms Survey 2011*, Small Arms Survey, Geneva, p. 6, at: <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2011/en/Small-Arms-Survey-2011-Chapter-09-EN.pdf>.

⁷ Parker, pp. 9-13; Law Library of Congress, *Firearms-Control Legislation and Policy*, 2013, at: <http://www.loc.gov/law/help/firearms-control/firearms-control.pdf>.

⁸ Parker, pp. 2, 9-13.

⁹ Lisandra Paraguassu, Ricardo Brito, “U.S. biggest source of illegal foreign guns in Brazil – report,” *Reuters*, January 10, 2018, <https://af.reuters.com/article/worldNews/idAFKBN1EZ2M3>.

David Gacs, Rachel Glickhouse, and Carin Zissis, “Gun Laws in Latin America’s Six Largest Economies,” Americas Society, January 11, 2013, <https://www.as-coa.org/articles/explainer-gun-laws-latin-americas-six-largest-economies>.

¹⁰ Law Library of Congress, p. 20.

¹¹ “Overview of gun laws by nation,” at: https://en.wikipedia.org/wiki/Overview_of_gun_laws_by_nation. France: <https://www.service-public.fr/particuliers/vosdroits/F2242>. Romania: <http://www.gandul.info/reportaj/exclusiv-20-000-de-romani-s-au-inarmat-in-2011-fostul-sef-de-la-arme-din-politie-stii-cat-e-valabil-avizul-psihiologic-pana-iesi-pe-usa-cabinetului-9375494>.

¹² Clif Burns, “High Capacity Magazines Exported from U.S. to Norway Shooter,” *ExportLaw Blog*, July 28, 2011, at: <https://www.exportlawblog.com/archives/3315>.

¹³ Parker, p. 8.

¹⁴ Law Library of Congress, p. 219.

¹⁵ Parker, pp. 9-13; Gacs, Glickhouse and Zissis.

¹⁶ Rama Lakshmi, “India already had some of the world’s strictest gun laws. Now it’s tightened them,” *Washington Post*, August 1, 2016, https://www.washingtonpost.com/world/asia_pacific/india-had-the-one-of-the-strictest-gun-laws-in-the-world-it-just-got-tighter/2016/08/01/affd9422-51da-11e6-b652-315ae5d4d4dd_story.html?utm_term=.f69ad52bfff.

¹⁷ 1. Take a firearm class and pass a written exam, which is held up to three times a year. 2. Get a doctor’s note saying you are mentally fit and do not have a history of drug abuse. 3. Apply for a permit to take firing training, which may take up to a month. 4. Describe in a police interview why you need a gun. 5. Pass a review of your criminal history, gun possession record, employment, involvement with organized crime groups, personal debt and relationships with friends, family and neighbors. 6. Apply for a gunpowder permit. 7. Take a one-day training class and pass a firing test. 8. Obtain a certificate from a gun dealer describing the gun you want. 9. If you want a gun for hunting, apply for a hunting license. 10. Buy a gun safe and an ammunition locker that meet safety regulations. 11. Allow the police to inspect your gun storage. 12. Pass an additional background review. Audrey Carlsen and Sahil Chinoy, “How to Buy a Gun in 15 Countries,” *The New York Times*, March 2, 2018, <https://www.nytimes.com/interactive/2018/03/02/world/international-gun-laws.html>.

¹⁸ Brazil provides an important example. See Rogert Muggah, “Where do Rio de Janeiro’s crime guns come from?” *OpenDemocracy*, August 8, 2016, <https://www.opendemocracy.net/democraciaabierta/robert-muggah/where-do-rio-de-janeiros-crime-guns-come-from>.

¹⁹ Larry Keane, “Why export control reform makes security and business sense,” National Shooting Sports Foundation, July 6 2018, <https://www.nssf.org/why-export-control-reform-makes-security-and-business-sense/>.