NATIONAL RIFLE ASSOCIATION OF AMERICA
**INSTITUTE FOR LEGISLATIVE ACTION**
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April 29, 2011

Firearms and Explosives Industry Division
Bureau of Alcohol, Tobacco, Firearms, and Explosives
99 New York Avenue, N.E.
Washington, DC 20226

Attention: Shotgun Importation Study

To whom it may concern:

On behalf of the National Rifle Association of America, I am submitting the attached comments on the "Study on the Importability of Certain Shotguns."

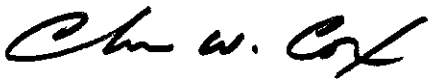
We believe that fundamentally, the study asks and answers the wrong question, because the Supreme Court has now made clear that "sporting purposes" are only one reason the Second Amendment protects the right to keep and bear arms. The "sporting purposes" test for firearm importation is illegitimate, because law-abiding Americans have the right to arms to defend themselves, their homes, their families and their country. There is no reason to deny people the choice to exercise that right with imported firearms, especially when (as here) identical firearms can be made and sold legally in the United States.

However, we understand that until the Congress or the courts change the law, your agency has the responsibility to apply it. In that regard, as we discuss at length in the attached comments, we believe the Bureau's "working group" has continued the Bureau's longstanding misinterpretation and misapplication of the "sporting purposes" test. That test was intended to require approval for importation of all firearms that are suitable for or adaptable to all forms of hunting, as well as to all forms of competitive or recreational target shooting. Nothing in the statute's text or legislative history suggests that the presence of any single feature that might have a military, law enforcement or defensive application would disqualify a firearm for importation.

As applied to shotguns in particular, we believe the working group has singled out features that in many cases are entirely suitable for sporting use, and in any event do not make firearms unsuitable or unadaptable for such use.

For these and all of the reasons detailed in our comments, we strongly urge you to abandon the working group's proposed import ban. If you have any questions on our comments, please feel free to contact my office.

Sincerely,



Chris W. Cox
Executive Director

# Comments of the National Rifle Association of America on the "ATF Study on the Importability of Certain Shotguns"

**Submitted by the**
**National Rifle Association of America Institute for Legislative Action**
**April 29, 2011**

NRA-ILA

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## Introduction

Federal law requires the Attorney General to approve the importation of several categories of firearms.[1] The Attorney General's obligation in that regard is delegated to the Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE). Therefore, herein, references to such obligation will be to the BATFE.

The relevant provisions were enacted by the Gun Control Act of 1968 (GCA[2]), the preamble to which, affirmed by the Firearms Owners Protection Act of 1986 (FOPA[3]), states:

> The Congress hereby declares that . . . [I]t is not the purpose of this title to place any undue or unnecessary Federal restrictions or burdens on law-abiding citizens with respect to the acquisition, possession, or use of firearms appropriate to the purpose of hunting, trap-shooting, target shooting, personal protection, or any other lawful activity, and that this title is not intended to discourage or eliminate the private ownership or use of firearms by law-abiding citizens for lawful purposes.

Under 18 U.S.C. § 925(d)(3), as amended by FOPA, the BATFE is required to approve the importation of any "firearm . . . of a type that does not fall within the definition of a firearm as defined in section 5845(a) of the Internal Revenue Code of 1954 [and that] is generally recognized as particularly suitable for or readily adaptable to sporting purposes, excluding surplus military firearms. . . ."

Though beyond the scope of the present discussion, firearms defined by § 5845(a) are those that are regulated by the National Firearms Act (NFA), such as a "machinegun," a rifle with a barrel less than 16 inches length, or a shotgun with a barrel less than 18 inches length.[4] Such firearms are possessed by the armed forces (not subject to the NFA), some private individuals, and some law enforcement agencies. Though some individuals use NFA firearms for sporting purposes,[5] § 925(d)(3) excludes such firearms from those the BATFE is required to approve for importation, consistent with 26 U.S.C. § 5844, which prohibits the importation of firearms regulated by the NFA, except for government and limited other purposes.

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[1] 18 U.S.C. §§ 925(d)-(e) (2011). The Gun Control Act of 1968 *authorized* the Secretary of the Treasury to approve the importation of such firearms. The Firearm Owners Protection Act of 1986 amended that law to *require* the Secretary to approve such importation. That responsibility was transferred to the Attorney General by the Homeland Security Act of 2002 (emphasis added).

[2] Pub. L. No. 90-618, 82 Stat. 1213, 1214 (1968).

[3] Pub. L. No. 99-308, 100 Stat 449 (1986).

[4] 26 U.S.C. § 5845(b) defines "machinegun" as "any weapon that shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver any such weapon, any part designed intended solely and exclusively, or combination of parts designed and intended for use in converting weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person." The NFA also regulates rifles and shotguns of less than 26 inches total length.

[5] Private individuals use NFA firearms for recreational target practice, training, and some competitions. The branches of the armed forces have teams that participate in marksmanship competitions, and some of the firearms some of the teams use are of a type that would be subject to the NFA, if possessed by a private individual or a state or local law enforcement agency.

Surplus military firearms are also generally beyond the scope of the present discussion, but some surplus military firearms are importable under provisions other than § 925(d)(3). Under 18 U.S.C. § 925(e), the BATFE is required to approve the importation of surplus military firearms and other firearms that are "curios and relics."[6] The Arms Export Control Act also provides for the importation of surplus military firearms that are curios and relics, and provides that surplus U.S. military firearms previously provided by the United States to a foreign government are importable, if the foreign government certifies that it owns the firearms.[7]

Also, U.S. surplus military firearms have been sold by the federal government through the Civilian Marksmanship Program (CMP)[8] to private individuals involved in marksmanship training and competition for more than a century. Such firearms have been among those most commonly used in the nation's premier marksmanship competitions—the NRA National Championships and the CMP National Trophy Matches—and in the local, state, and regional competitions that precede those national events each year. Also, as recognized in the legislative history of § 925(d)(3), surplus military firearms have been widely adapted to sporting purposes by hunters.[9] The traditional term used to describe the adaptation of a surplus military rifle, such as an Enfield or a Mauser, for use in hunting is "sporterization."[10]

Many firearms that are regulated by the NFA, many surplus military firearms, and many other firearms have, in addition to whatever other features and characteristics they may possess, features such as a folding, telescoping or collapsible stock; bayonet lug; flash suppressor; magazine that holds more than five rounds of ammunition, or a drum magazine; integrated rail system surrounding the barrel; light enhancing device; grip attached underneath the barrel; weight greater than 10 pounds; and/or dimension greater than three inches width or greater than four inches depth.

Therefore, the unambiguous language of § 925(d)(3) makes clear that Congress recognized that some firearms that are regulated by the NFA or that are surplus military firearms—including those that have one or more of the features named in the preceding paragraph—are "particularly suitable for or readily adaptable to sporting purposes." Otherwise, Congress would have had no need to expressly exclude them from the firearms that the BATFE is required to approve for importation pursuant to § 925(d)(3).

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[6] "Firearms which are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons [including] Firearms which were manufactured at least 50 years prior to the current date, but not including replicas thereof; Firearms which are certified by the curator of a municipal, State, or Federal museum which exhibits firearms to be curios and relics of museum interest; and Any other firearms which derive a substantial part of their monetary value from the fact that they are novel . . . ." 27 C.F.R. § 478.11 (2001).

[7] 22 U.S.C. § 2778(b)(1)(B) (2011).

[8] The CMP was formerly the National Board for the Promotion of Rifle Practice, authorized by Congress in the War Department Appropriations Bill of 1903. It was reconfigured as the CMP by the National Defense Authorization Act of 1996. Pub. L. No. 104-106, 110 Stat 186 (1996).

[9] GCA sponsor Sen. Thomas Dodd (D-Conn.) said that he believed that according to his legislation, "Military surplus rifles, such as the well-known Enfield and Mauser, which are used by America's hunters" would be eligible for importation. 114 Cong. Rec. 13344 (daily ed. May 8, 1968).

[10] Sporterization of a military surplus rifle for hunting purposes typically amounts to replacing the military stock with one better suited to hunting, and attaching a telescopic sight.

In January 2011, a BATFE shotgun "working group" (SWG) released a report[11] on its review of "numerous shotguns with diverse features." The effort was undertaken, the report said, "to establish criteria that the [BATFE] will use to determine the importability of certain shotguns."[12] According to the report, the SWG sought "to first identify those activities that are considered legitimate 'sporting purposes'" and thereafter "to determine whether any particular firearm was particularly suitable for or readily adaptable to those sports."[13]

That approach, the SWG noted, is the opposite of the approach used in 1989 by the BATF (as the BATFE was then known) rifle working group (RWG), which considered certain rifles and their features first, and only thereafter considered § 925(d)(3)'s "sporting purposes" language. The SWG's approach is also different from the approach used by the BATF in 1998, when it increased the restrictiveness of its 1989 determination. The SWG said:

> While the 1989 and 1998 studies considered all rifles in making their recommendations, these studies first identified firearm features and subsequently identified those activities believed to constitute a legitimate "sporting purpose." However, in reviewing the previous studies, the working group believes that it is appropriate to first consider the current meaning of 'sporting purpose' as this may impact the 'sporting' classification of any shotgun or shotgun features.[14]
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> [Note: The SWG's approach was also different than the approach used by the BATF in 1993, when it arbitrarily banned the importation of various semi-automatic pistols that met the standard for importation under the BATF's Handgun Factoring Criteria, and which the BATF had previously approved for importation on that basis.[15]]

Like the RWG, the SWG did not even acknowledge the existence of most forms of recreational target shooting, including the most common form—shooting at professionally printed paper targets that have measured scoring areas. Instead, the SWG, like the RWG, gave attention to only one form of recreational target shooting, "plinking,"[16] which the SWG described as "shooting at random targets such as bottles and cans." Echoing the RWG, the SWG said that "the activity known as 'plinking' is 'primarily a pastime' and could not be considered a

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[11] BATFE Firearms and Explosives Industry Division, *ATF Study on the Importability of Certain Shotguns*, January 2011.

[12] *Id*. at ii.

[13] *Id*. at 5-6.

[14] *Id*. at iii.

[15] The criteria award points to handguns having certain features considered sporting. A handgun must achieve a certain number of points to be approved for importation. Features which increase a handgun's points in the criteria include size, weight, and target grips, each of which the SWG proposes should disqualify a shotgun from importation. A fourth feature that the SWG suggests should disqualify a shotgun from importation, an integrated rail system, does not count against handguns in the criteria. *See* BATFE, Factoring Criteria for Weapons *available at* http://www.atf.gov/forms/download/atf-f-5330-5.pdf (last visited April 29, 2011).

[16] The RWG's report, "Report and Recommendation of the ATF Working Group on the Importability of Certain Semiautomatic Rifles," 1989, noted that the 1968 Treasury Department Firearm Evaluation Panel, while recommending the importation of rifles like those the BATF banned the importation of in 1989, took the position that "plinking"—which it narrowly defined as shooting at bottles and cans, implying a distinction between that and recreational/non-competitive shooting at other types of targets—should not be considered a sporting purpose.

recognized sport"[17]—a notion with ominous implications for the sporting bona fides of America's national pastime, baseball.

The SWG "recognized hunting and other more generally recognized or formalized competitive events similar to the traditional shooting sports of trap, skeet, and [sporting] clays."[18] It also recognized the popularity of "practical shooting"—the name given to forms of competitive and recreational target shooting that test modern defensive marksmanship skills. However, the SWG, like the RWG, took the position that "sporting purposes" does not include "practical shooting" competitions, which both groups referred to as being "police," "combat," and "military" in nature.[19] The SWG claimed that "it was not appropriate to use this shotgun study to determine whether practical shooting is 'sporting' under § 925(d)(3)" because "A change in ATF's position on practical shooting has potential implications for rifle and handgun classifications."[20]

By "classifications," the SWG meant "*re*-classifications," meaning the BATF's decision in 1989 to reverse several dozen of its previous interpretations of § 925(d)(3), by banning the importation of rifles that it had previously approved for importation;[21] its 1993 decision to reverse several of its other interpretations and to ignore its own Handgun Factoring Criteria, by banning the importation of handguns that it had previously approved for importation;[22] and its decision in 1998 to reverse itself yet again, by banning the importation of rifles that had been designed expressly to comply with its 1989 policy reversal, and which the BATF had approved for importation from 1989 to 1998.[23]

Though, as noted above, the SWG claimed that it sought "to determine whether any particular *firearm* was particularly suitable for or readily adaptable to those sports"[24] that it was willing to recognize as "sporting," the SWG focused not on shotguns, as called for by § 925(d)(3), but rather on individual *features* of various shotguns. (Emphases added.)

The SWG said, "the working group determined that certain shotgun *features* are <u>not</u> particularly suitable or readily adaptable for sporting purposes." (Italics emphasis added.) According to the SWG, these features include:

1) Folding, telescoping, or collapsible stocks;
2) bayonet lugs;
3) flash suppressors;

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[17] BATFE, *supra* note 11, at iii.
[18] *Id.* at iv (discussing how trap, skeet and sporting clays replicate hunting scenarios, by hurling clay discs in flight patterns similar to those performed by game birds and small game animals in the field).
[19] BATFE, *supra* note 11, at ii, 3, 4, 8; BATF, *supra* note 16 at 4, 5, 11.
[20] BATFE, *supra* note 11, at iii.
[21] The BATF banned the importation of rifles that have the same features as the AR-15, the rifle most widely used for marksmanship training and competition in the United States.
[22] The BATF banned the importation of pistols such as the HK SP89 and Uzi Pistol, which easily met the standards established in the BATF's longstanding Handgun Factoring Criteria system.
[23] The BATF banned the importation of rifles that had been designed expressly to comply with the BATF's 1989 ruling.
[24] BATFE, *supra* note 11, at 6.

4) magazines over 5 rounds, or a drum magazine;
5) grenade-launcher mounts;
6) integrated rail systems (other than on top of the receiver or barrel);
7) light enhancing devices;
8) excessive weight (greater than 10 pounds for 12 gauge or smaller);
9) excessive bulk (greater than 3 inches in width and/or greater than 4 inches in depth);
10) forward pistol grips or other protruding parts designed or used for gripping the shotgun with the shooter's extended hand.[25]

The SWG continued, "the working group determined that shotguns with any one of these *features* are most appropriate for military or law enforcement use. *Therefore*, shotguns containing any of these features are not particularly suitable for nor readily adaptable to generally recognized sporting purposes such as hunting, trap, sporting clay[s], and skeet shooting."[26] (Emphasis added.)

The SWG concluded, "we believe that those shotguns containing the enumerated features cannot be fairly characterized as 'sporting' shotguns under the statute. Therefore, it is the recommendation of the working group that shotguns with any of the characteristics or features listed above not be authorized for importation."[27]

Having summarized the SWG's position, we should make clear that the NRA believes limiting the importation of firearms to those that meet a "sporting purposes" requirement is unconstitutional, given that the Second Amendment protects the right to keep and bear arms for defensive purposes. In *District of Columbia v. Heller*,[28] the Court ruled that "[T]he inherent right of self-defense has been central to the Second Amendment right," the Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation," and "Just as the First Amendment protects modern forms of communications and the Fourth Amendment applies to modern forms of search, the Second Amendment extends, prima facie, to all instruments that constitute bearable arms."

However, irrespective of such a law's conflict with the Second Amendment and the intent of Congress in the GCA, prohibiting the importation of a shotgun because it has one or more of the features listed by the SWG would violate the requirement under § 925(d)(3) that the BATFE approve the importation of any shotgun that is "generally recognized as particularly suitable for or readily adaptable to sporting purposes."

The SWG reached its flawed conclusions by making numerous errors. Some of them include:

- The SWG followed a disturbing trend within the BATFE of severely misinterpreting the unambiguous language of § 925(d)(3), disregarding the common meaning of

[25] *Id.* at iv.
[26] *Id.*
[27] *Id.* at 13-14.
[28] *Dist. of Columbia v. Heller*, 540 U.S. 570, 582, 592, 628 (2008).

words to construct varying, inconsistent, ad hoc standards, each designed to justify banning the importation of firearms that are clearly importable under the language Congress enacted, and that had previously been approved for importation for many years.

- The SWG took the position that the most common forms of recreational sport shooting, as well as a popular form of competitive target shooting, are not "sporting purposes."

- The SWG, like the RWG, engaged in a recall of § 925(d)(3)'s legislative history that was selective and unnecessary in light of the statute's unambiguous language.

- The SWG concluded that a shotgun should be disqualified from importation if it has just one of the features the SWG disfavors. This is in stark contrast to the RWG-engendered rifle importation ban of 1989, which banned rifles only if they had *multiple* such features, and in stark contrast to the BATFE's Handgun Factoring Criteria, according to which a handgun is prohibited from importation only if it fails to have *multiple* features that the agency considers sporting. This departure from earlier practice parallels legislation that has been introduced in Congress, unsuccessfully, to ban as "assault weapons" not only various firearms that have multiple features, but also to ban those that have merely one feature.

- The SWG's position is contradictory to other positions taken by the BATFE, in that some of the features the SWG considered "military" when found on a shotgun, and therefore suggests as grounds for banning the shotgun's importation, BATFE considers "sporting" when found on a handgun, and contribute to a handgun achieving the points required to be eligible for importation under the BATFE's Handgun Factoring Criteria.[29] The SWG made no attempt to explain these contradictions.

- Like the RWG, the SWG ignored the law's requirement that the BATFE approve the importation of firearms that are "readily adaptable to sporting purposes," for example, by removing a flashlight, or by switching from a larger to a smaller magazine. Like the RWG, the SWG pretended that "readily adaptable" means "already adapted."

- The SWG contended, without basis, that any firearm or feature that might be useful for some military or law enforcement purpose is, by virtue of that fact alone, not suitable for or readily adaptable to sporting purposes. This is irreconcilable with the plain language of § 925(d)(3), which makes clear that Congress understood that some NFA firearms and surplus military firearms—many of which have one or more of the features that the SWG proposes should disqualify a shotgun from importation—meet one or both of the law's "sporting purposes" criteria. It is also irreconcilable with the language of § 925(d)(3), in that the law does not condition a firearm's importability on whether it might have some military or law enforcement use, but

[29] *See supra* note 15.

rather on whether the firearm is suitable for or adaptable to sporting purposes.

For these and other reasons discussed herein, the BATFE should reject the conclusions and recommendation of the SWG. Furthermore, the BATFE should reverse the agency's erroneous interpretations of § 925(d)(3) in 1989 and 1998, under which the Bureau improperly banned the importation of semi-automatic rifles that are particularly suitable for some sports and readily adaptable to other sports. It should also reverse the agency's 1993 ban on the importation of certain handguns, and evaluate such handguns according to the longstanding Handgun Factoring Criteria used for other handguns. It should not use one standard to justify the banning of some firearms, and on a case-by-case basis adopt other fundamentally different standards to justify banning other firearms. Congress enacted one standard, and BATFE should adopt a uniform standard by which to administer it.

## I. Analysis of the SWG's Report and Recommendation

### A. The text of 925(d)(3)

#### 1. "Firearm . . . of a type"

The SWG claimed that section "925(d) . . . creates four *narrow* categories of firearms that the Attorney General must authorize for importation"[30] (Emphasis added.) In fact, the language of § 925(d)(3) is not "narrow." The language—"is of a type that . . . is generally recognized as particularly suitable for or readily adaptable to sporting purposes"—is broad on its face.

Based on the incorrect view that § 925(d)'s categories are "narrow," the SWG took the position that two shotguns that are identical, but for the fact that one of them has a six-round magazine while the other has a five-round magazine, or that one has a forward grip while the other does not, or another such minor difference, should be considered to be of two different "types" for purposes of § 925(d)(3), and that one of them should be prohibited from importation. The SWG said:

> [A]ny shotgun with one or more of these features represent [sic] a 'type' of firearm that is not "generally recognized as particularly suitable or readily adaptable to sporting purposes . . . .[31]

The SWG's interpretation of "type" is in stark contrast to existing BATFE importation regulations, which use the term "type" to refer simply to "rifle, shotgun, pistol, [or] revolver."[32] It is also contradicted by the SWG's own statement that "type" distinguishes no more narrowly than between rifles, shotguns and handguns. Elsewhere in its report, the SWG observed about the popular form of sport shooting known as "practical shooting":

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[30] BATFE, *supra* note 11, at ii.
[31] *Id.* at 9.
[32] *See* 27 C.F.R. § 478.112(b)(1)(B) (2011); *see also* 26 C.F.R. § 178.112(b) (1968).

> Practical shooting consist[s] of rifle, shotgun and handgun competitions, as well as '3-Gun' competitions utilizing all three *types* of firearm on one course.[33] (Emphasis added.)

Contrary to the SWG's "narrow" reading, § 925(d)(3) uses "type" to distinguish broadly between two groups of firearms: (1) those that are not regulated by the NFA *and* that meet one or both of the law's sporting purposes criteria, and (2) the relatively few remaining others. In essence, Congress wanted most firearms to be importable and for § 925(d)(3) to exclude only a relatively limited subset of other firearms.

The legislative history of § 925(d)(3) makes clear that Congress believed that the "type" of firearms that are not suitable for or adaptable to sporting purposes were low quality, unsafe and/or inaccurate firearms, particularly short-barreled handguns made of inferior materials, which did not possess target type sights, mechanical safety devices, and other features commonly associated with the sporting uses of firearms. These are the kinds of handguns that the BATF's longstanding Handgun Factoring Criteria prohibit from importation.

However, the law was intended to generally provide for the importation of long guns—rifles and shotguns—excluding those regulated by the NFA and surplus military firearms.

For example, importation regulations in 1968 provided the following criteria for importation of a firearm: "(1) the caliber or gauge of the firearm is suitable for use in a recognized shooting sport, (2) the type of firearm is generally recognized as particularly suitable for or readily adaptable to such use, and (3) the use of the firearm in a recognized shooting sport will not endanger the person using it due to deterioration through such use or because of inferior workmanship, materials or design."[34]

In 1967, with the Department of the Treasury prospectively responsible for enforcing any firearm importation law resulting from passage of the Gun Control Act, IRS Commissioner Sheldon Cohen testified that the purpose of the "sporting purpose" limitation was to curb imports of handguns "of poor quality and dangerous to the user," namely "inexpensive, nonmilitary, .22-caliber pistols and revolvers."

Cohen continued, "The bill would not, and I emphasize would not, preclude the importation of good quality sporting-type firearms or of military surplus rifles or shotguns particularly suitable for or adaptable to sporting use."[35] He noted, "Essentially the long guns would be distributable with a minimum of restrictions."[36] (Note: Surplus military firearms were not excluded from importation in early versions of the legislation.)

Firearms neither suitable for nor readily adaptable to sporting purposes were identified as "inexpensive, small-caliber firearms, which have been termed as 'unsafe' and as 'Saturday night

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[33] BATFE, *supra* note 11, at 7.
[34] 26 C.F.R. § 178.112(c) (1968), *repealed by* 51 Fed. Reg. 39622 (Oct. 29, 1986).
[35] *Anti-Crime Program*: *Hearings before Subcomm. No. 5, H. Comm. on the Judiciary*, 90th Cong. 577 (1967).
[36] *Federal Firearms Act: Hearings Before the Subcomm. to Investigate Juvenile Delinquency, S. Comm. on the Judiciary*, 90th Cong. 86 (1967).

specials.'"[37] "The provisions concerning the importation of firearms would not interfere with the bringing in of currently produced firearms, such as rifles, shotguns, pistols, or revolvers of recognized quality which are used for hunting and for recreational purposes, or for personal protection."[38]

Sen. Thomas Dodd (D-Conn.), the sponsor of the Gun Control Act, which contained the "sporting purpose" language, said that the law would prohibit the importation of "cast-off military arms," such as those with worn-out barrels rendering them too inaccurate for sporting purposes, and "inexpensive, easily concealed, .22 caliber pot metal pistols and revolvers, and the blank starter guns."[39] Acknowledging that better-condition military surplus firearms possessing what the SWG now calls "military" features are suitable for or adaptable to sporting purposes, Dodd said, "Military surplus rifles, such as the well-known Enfield and Mauser, which are used by America's hunters," could be imported. Of course, Enfields and Mausers are equipped with bayonet mounts, which the SWG considers grounds to disqualify a shotgun from importation, and the Enfield has a magazine that holds double the five-round limit proposed by the SWG. Dodd added, "Reasonable exceptions are provided for, which include an exemption for sporting rifles, sporting handguns, and shotguns, including military surplus long arms."[40]

Non-importable firearms would be those "which are not particularly suitable for target shooting or hunting." "The provisions concerning the importation of firearms would not interfere with the bringing in of currently produced firearms, such as rifles, shotguns, pistols, or revolvers of recognized quality which are used for hunting and for recreational purposes."[41]

The Senate report on the bills containing the importation provisions referred to "relatively inexpensive pistols and revolvers" which it said were "largely worthless for sporting purposes."[42] But the law would allow "the importation of quality made, sporting firearms, including pistols, rifles, and shotguns, such as those manufactured and imported by Browning and other such manufacturers and importers of firearms."[43]

In administering § 925(d)(3) from 1968 to 1989, the Treasury Department generally approved shotguns and rifles as meeting the sporting criteria and therefore importable, as long as they were not firearms regulated by the NFA or military surplus firearms. This sporting presumption for long guns was expressed in Rev. Rul. 69-309, C.B. 1969-1, 361, which waived the need for an import permit for military personnel if "the importation consists of rifles or shotguns or any combination thereof (excluding any firearm coming within the purview of the National Firearms Act and any firearms of military surplus origin) . . . ."

[37] S. Rep. No. 1097 (1968), reprinted in 1968 U.S.C.C.A.N. 2165.
[38] *Id.* at 2167.
[39] 114 Cong. Rec. 12310 (1968).
[40] *Id.* at 13344.
[41] S. Rep. 1501, at. 24 (1968).
[42] *Id.* at 28.
[43] *Id.* at 38.

**2. "Generally recognized"**

Section 925(d)(3) protects the importation of firearms that are "generally recognized" as meeting one or both of the law's sporting purposes criteria. *New Webster's Dictionary of the English Language*, published three years after enactment of § 925(d)(3), defines "general" as "Pertaining to, affecting, including, or participated in by all members of a class or group; pertaining to the whole of something; common to many or most, though not universal."

Thus, in § 925(d)(3), "generally recognized" means recognized by the shooting sports community—Americans who participate in shooting sports or who are otherwise familiar with them. "Generally recognized" does not mean "recognized by a small, anonymous group within the BATFE," any more than it means "recognized by the Attorney *General*."

Before issuing its report on the importation of rifles in 1989, the RWG consulted with people who participate in or who are otherwise familiar with shooting sports, such as hunting guides, though it did not take the results of those consultations seriously.

By contrast, the SWG apparently didn't consult with anyone in the shooting sports community. Instead, it claimed that "Congress gave the Secretary of the Treasury (now the Attorney General) the discretion to determine a weapon's suitability for sporting purposes."[44] It pointed to a 1968 Senate report, which, referring to "extremely cheap .22-caliber revolvers made largely in Europe," noted the "difficulty of defining weapons characteristics" as a reason why the Secretary "has been given fairly broad discretion in defining and administering the import prohibition."[45]

The SWG claims the Senate report's statement gives the BATFE broad discretion, but the only discretionary function discussed by the report related to inexpensive, small-caliber handguns. As noted, the report had already stated that quality rifles and shotguns would be importable, and that sporting purposes included target shooting, competitions, and other forms of recreation.

Additionally, before § 925(d)(3)'s enactment, IRS Commissioner Cohen stated, "I have found, in reviewing the Act, very little in the way of discretionary authority. . . . [T]he courts of the United States have never allowed an administrator's discretion to go unfettered."[46] And, the Treasury Department responded to criticisms of the import provision of an early version of the bill as follows: "The meaning to be given to such statutory language would be a matter of administrative interpretation and ultimately of judicial construction. The Secretary or his delegate cannot act arbitrarily."[47]

Moreover, FOPA removed any latent discretion the BATF had to interpret the law. As originally passed by the GCA, 925(d)(3) merely allowed, but did not require, the BATFE to

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[44] BATFE, *supra* note 11, at 2.
[45] *See supra* note 41.
[46] *Federal Firearms Act: Hearings before the Subcomm. to Investigate Juvenile Delinquency, S. Comm. on the Judiciary*, 90th Cong. 57-58 (1967).
[47] *Federal Firearms Act: Hearings before the Subcomm. to Investigate Juvenile Delinquency*, 89th Cong. 331 (1965); *see also* 114 Cong. Rec. 12493 (1968) (Treasury analysis stating that "the Secretary's power . . . is strictly limited" by the law).

approve the importation of firearms meeting one or both of the law's sporting purposes criteria. FOPA amended § 925(d)(3) to *require* the BATFE to approve the importation of such firearms. The difference between the pre-1986 provision and the FOPA amendment was described as:

> Under that Section [§ 925(d)], the Secretary *may* authorize importation of specified firearms or ammunition. . . . The Committee amendment *requires* the Secretary to authorize the importation of firearms in the listed categories . . . . It is anticipated that in the vast majority of cases, this will not result in any change in current practices.[48] (Emphasis added.)

**3. "Sporting purposes"**

The SWG agreed with the RWG that sporting purposes should be considered "limited to traditional sports such as hunting, skeet shooting, and trap shooting." Of course, § 925(d)(3) refers broadly to "sporting purposes," not "traditional sports." Also, recreational target shooting is a traditional sport.

In the absence of a special definition in the law, the dictionary definition of "sport" governs. Again turning to the *New Webster's* dictionary, "sport" is defined as "Diversion, amusement, or recreation; a pleasant pastime; a pastime pursued in the open air or having an athletic character." *Webster's New World Dictionary* of 1991 defines "sport" as 1. any activity or experience that gives enjoyment or recreation; pastime; diversion. 2. such an activity, esp. when competitive, requiring more or less vigorous bodily exertion and carried on . . . according to some traditional form or set of rules . . . ."[49] The *American Heritage Dictionary*, Second College Edition, 1982, defines "sport" as "1. An active pastime; recreation."

The use of plain English without a special definition does not render a statute ambiguous or subject it to revision by an agency. In *United States v. Bossinger*,[50] the U.S. Court of Appeals for the Third Circuit held recreational target shooting to be a "sporting purpose":

> In common parlance, "sport" connotes recreation – something that is a source of pleasant diversion. *See, e.g.*, 2 *Oxford English Dictionary* 2979 (compact ed. 1986) ("Pleasant pastime; entertainment or amusement; recreation; diversion") . . . . A firearm possessed "solely for lawful sporting purposes" is, accordingly, understood to mean a firearm possessed solely for lawful recreational use. . . . In particular, we find no authority, legal or lexicographical, for the proposition that sport necessarily implies competition. While there are, of course, competitive

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[48] S. Rep. 98-583, at 27 (1984). Another FOPA amendment to § 925(d)(3) restricted importation of barrels for firearms not meeting the sporting criteria. Such firearms were invariably referred to as "snubbies" or "Saturday Night Special" handguns, and the sporting use of rifles and shotguns was never questioned. *E.g.*, 131 Cong. Rec. S8702 (June 14, 1985) (Sen. McClure); *id*. at S9129 (July 9, 1985) (Sen. Matsunaga); *id*. at S9142 (B. R. Thompson, Asst. Sec. of the Treasury); H. Rep. 99-495, 15 (1986); *id*. at 17 (BATF Director Higgins); 132 Cong. Rec. H1652-53 (April 9, 1986) (Rep. Volkmer).

[49] *See Camp Fire Club v. United States*, 1 F. Supp. 782, 784 (Ct. Cl. 1932) (holding that hunting club was a "sporting club" because some types of "sporting events such as contests in rifle, shotgun, and revolver shooting" took place at the club).

[50] 12 F.3d 28, 29 (3rd Cir. 1993).

> sports, sporting activities, including those involving firearms, are commonly engaged in solely for the pleasure derived from the activity without competing against others. The example that comes most readily to mind in this context is the sport referred to by the district court as target shooting. Although there are those who shoot competitively at a ringed "bull's eye" target, many shoot at such a target for the pleasure of testing their skill at shooting accurately. . . ."

The court added: "Distinguishing sport from recreation would be a challenge for any scholastic – as we have noted, lexicographers define sport as recreation."

Furthermore, the Gun Control Act uses "sporting purposes" or "sporting use" broadly in other provisions, making clear that sporting purposes include all forms of recreational target shooting, organized shooting competitions, and hunting.

- 18 U.S.C. § 922(a)(5)(B) exempts from a prohibition on the transfer of a firearm, by a person who is not a federal firearm licensee, to a person who does not reside in the transferor's state, a transfer "to any person for the temporary use for lawful sporting purposes."

- 18 U.S.C. § 922(a)(9) makes it unlawful for a person who does not reside in any state to receive a firearm except "for lawful sporting purposes."

- 18 U.S.C. § 922(b)(3)(B) exempts from a prohibition on the transfer of firearm, by a person who is a federal firearm licensee, to a person who does not reside in the licensee's state, a transfer "for temporary use for lawful sporting purposes."

- 18 U.S.C. § 922(y)(2)(A), permits the possession of firearm by aliens "admitted to the United States for lawful hunting or sporting purposes."

- 18 U.S.C. § 923(j) refers to the "competitive use, or other sporting use of firearms," clearly indicating that shooting sports are not limited to marksmanship competitions.

- 18 U.S.C. § 925(a)(2) exempts from the Gun Control Act the transportation of U.S. military surplus firearms for the purpose of enabling a person "to engage . . . in competitions,"[51] clearly indicating Congress' recognition of the use of military surplus firearms for the sporting purpose of target shooting competitions, without regard for the specific type of competition.

The above references to "sporting purposes" are in criminal provisions to which courts never owe deference to agency interpretations.[52] Further, it is an "elementary canon of statutory

[51] 10 U.S.C. § 4308 provided for "the promotion of practice in the use of rifled arms," including "matches or competitions in the use of those arms." 70A Stat. 236 (1956). It was repealed by Pub. L. 104-106, 110 Stat. 186 (1996), which transferred the Civilian Marksmanship Program to the Corporation for the Promotion of Rifle Practice and Firearms Safety, including the sale to civilians of military surplus M1 .30 caliber rifles.

[52] *See Crandon v. United States*, 494 U.S. 152, 177-78 (1990) (Scalia, J., concurring) (holding that the rule of lenity requires that any ambiguity in a criminal statute – including classification of firearms under the Gun Control Act – must be interpreted against the government and in favor of a person to whom the law may apply; *see also United*

construction to give a term a 'consistent meaning throughout the Act.'"[53] Thus, "sporting purposes" for importation must be read with the same broad meaning as used elsewhere in the Act to include hunting, target shooting competitions of all kinds, and recreational target shooting.

Having limited its recognition of shotgun sports to hunting, trap, skeet, and sporting clays, the SWG, like the RWG, ignored all other forms of recreational target shooting except "plinking," which it described as "shooting at random targets such as bottles and cans."[54] And, it dismissed "plinking" as "primarily a pastime [that] could not be considered a recognized sport for the purposes of importation."[55]

Of course, most recreational and non-competitive target shooting in the United States is not at "random targets," whether "bottles and cans" or any other. Most recreational and non-competitive target shooting is at paper targets marked with scoring areas appropriate to the firearm and distance at which the targets are being shot, or at other commercially produced targets. Commercial ranges do not allow shooting at "random targets such as bottles and cans."

Nevertheless, "plinking" constitutes a sporting purpose. In *United States v. Bossinger*, cited above, the U.S. Court of Appeals for the Third Circuit held that "a firearm possessed solely for lawful sporting purposes includes a firearm possessed solely for plinking in a manner lawful in the location where the plinking is conducted."

The SWG claimed that "Recognition of plinking as a sporting purpose would effectively nullify section 925(d)(3) because it may be argued that any shotgun is particularly suitable for or readily adaptable to this activity.[56] However, the SWG was incorrect. As noted above, firearms that Congress believed did not meet § 925(d)(3)'s standard were poorly made, unreliable, and/or inaccurate pistols. Long guns were generally intended to be importable; surplus military firearms, some of which might include rifles and shotguns that were so worn as to be inaccurate, unreliable, or unsafe, were excluded from importation by § 925(d)(3).

Following § 925(d)(3)'s enactment, the Treasury Department established the Firearms Evaluation Panel, the minutes of which reflect: "It was generally agreed that firearms designed and intended for hunting and *all types of organized competitive target shooting* would fall within the sporting purposes category."[57] (Emphasis added). The Panel approved the importation of the BM59 Beretta Sporter Version Rifle, SIG-AMT Sporting Rifle, and CETME Sporting Rifle, saying "It was the consensus that these rifles do have a particular use in target shooting and hunting."[58] Such rifles have some of the same features that the RWG considered grounds to disqualify a rifle from importation in 1989, and that the SWG believes should disqualify a shotgun from importation today.

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*States v. Thompson/Center Arms Co.*, 504 U.S. 505, 517-18 (1992); *F.J. Vollmer Co., Inc. v. Higgins*, 23 F.3d 448, 452 (D.C. Cir. 1994) (rule of lenity), *later proceeding,* 102 F.3d 591, 593 (D.C. Cir. 1996).

[53] *Gustafson v. Alloyd Co*., 513 U.S. 561, 568 (1995).

[54] BATFE, *supra* note 11, at note 4; *see also* BATF, *supra* note 16, at 10.

[55] BATFE, *supra* note 11, at iii.

[56] *Id.* at 7.

[57] Minutes of 1st Meeting of the Treasury Department Firearms Evaluation Panel (on file with author).

[58] *Id.*

The Panel considered that target shooting and competitions in general were sporting purposes, saying, "Much discussion centered around the use of pistols as sporting weapons and the various competitive matches fired with pistols. The panel was unanimous in the conclusion that high quality pistols with appropriate safety features and other design features found in target guns and with an overall length of at least six inches made them particularly suitable for sporting purposes."[59]

The SWG admits that among the Panel, "no discussion took place on shotguns given that, at the time, all shotguns were considered inherently sporting because they were utilized for hunting or organized competitive target competitions."[60] That was the BATFE's view for the next 16 years.

Now, the SWG laments that "A broad interpretation of 'sporting purposes' may include any lawful activity in which a shooter might participate and could include any organized or individual shooting event or pastime."[61] Indeed.

**a. Practical shooting and inconsistent standards**

The SWG recognized "the traditional shooting sports of trap, skeet, and [sporting] clays" as "sporting purposes," and then turned to practical shooting competitions. The latter, the SWG noted, "are often organized by local or national shooting organizations," such as "the United States Practical Shooting Association (USPSA) and International Practical Shooting Confederation (IPSC) . . . ."[62]

The SWG noted that "the number of members reported for the USPSA is similar to the membership for other shotgun shooting organizations,"[63] meaning those dedicated to shotgun sports that the SWG recognized as "sporting purposes"—namely trap, skeet, and sporting clays.

However, the SWG refused to consider practical shooting to be a "generally recognized" sport, saying that "organizations involved in shotgun hunting of particular game such as ducks, pheasants and quail indicate significantly more members than any of the target shooting organizations."[64]

Of course, by that standard, trap, skeet, and sporting clays would also not be "generally recognized" as sports, since the number of people who participate in those sports is much smaller than the number of people who use shotguns for hunting.[65] The same is true for biathlon, bobsled, curling, luge, and other Olympic sports whose participants are far outnumbered by

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[59] Minutes of 2nd Meeting of the Treasury Department Firearms Evaluation Panel (on file with author).
[60] BATFE, *supra* note 11, at 3.
[61] *Id.* at 7.
[62] *Id.*
[63] *Id.* at 8.
[64] *Id.*
[65] *E.g.*, U.S. Fish and Wildlife Service, *2006 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation*, 22 (2006) *available at* http://www.census.gov/prod/2008pubs/fhw06-nat.pdf (last visited April 29, 2011) (finding that 12.5 million people ages 16 and older hunted in 2006).

hunters, by people who participate in practical shooting, and by people who play baseball, football, basketball, tennis, golf, and many other sports.

The SWG also said, "the working group determined that it was not appropriate to use this shotgun study to make a definitive conclusion as to whether practical shooting events are 'sporting,'" because "Any such study [of practical shooting competitions] must include rifles, shotguns and handguns because practical shooting events use all of these firearms, and a change in position by ATF on practical shooting . . . may have an impact on the sporting suitability of rifles and handguns."[66] Though the SWG admitted that "a more thorough and complete assessment is necessary before ATF can consider practical shooting as a generally recognized sporting purpose,"[67] it declined to conduct such a study and instead rushed to recommend banning the importation of shotguns that are particularly suitable for or readily adaptable to practical shooting competitions.

What the SWG meant is that a thorough consideration of practical shooting might reach conclusions that would undercut the BATF's decisions in 1989 and 1998 to ban the importation of various rifles, and its decision in 1993 to ban the importation of various pistols, decisions that were rife with flaws.

The SWG's reason for refusing to give due consideration to practical shooting—because a fair assessment of that sport might undercut the rationale upon which the BATF prohibited the importation of other firearms on other occasions—is highly inappropriate. A shotgun is importable if it meets either of the two "sporting purposes" criteria stated in § 925(d)(3). Whether a shotgun is importable does not depend on whether the BATF made a mistake in prohibiting the importation of rifles and handguns in other contexts. BATFE must interpret the law to fulfill congressional intent, not to protect the agency against having to admit that it interpreted the law improperly on several previous occasions.

A study of practical shooting competitions would reveal that they meet the definition of "sport" at least as well as all of the firearm sports that the SWG recognized. As the SWG correctly noted, "Practical shooting events generally measure a shooter's accuracy and speed in identifying and hitting targets while negotiating obstacle-laden shooting courses."[68] Combining bodily movement, speed, and precision also describes most other sports.

A study of practical shooting competitions would also reveal that firearms commonly used in such competitions are routinely equipped with folding, telescoping, or collapsible stocks; bayonet lugs; flash suppressors; magazines that hold more than five rounds; integrated rail systems; light enhancing devices; weight greater than 10 pounds; bulk greater than three inches in width and/or greater than four inches in depth; and/or forward pistol grips or other such parts—any one of which the SWG considers grounds for prohibiting a shotgun's importation.

Similarly, a study of the National Trophy Matches, held annually since authorized by Congress in 1903; the National Rifle Championships, held for even longer; and the hundreds of

[66] BATFE, *supra* note 11, at 8.
[67] *Id.* at iii.
[68] *Id.* at 7.

local, state and regional competitions held under NRA and CMP rules each year—which in the aggregate have for decades accounted for the vast majority of rifle competitions in the United States—would reveal that the rifles most commonly used for these competitions also possess features that the BATF considered grounds for prohibiting the importation of various semi-automatic rifles in 1989 and in 1998. These features include pistol-type grips, flash suppressors, bayonet mounts, and the ability to use magazines that hold more than 10 rounds of ammunition.

**b. Practical shooting is not only "military" or "police" in nature**

As noted, the SWG repeated the RWG's error in characterizing practical shooting competitions as being only "military" or "police" in nature. Even if true, the SWG would have made no point. Millions of athletes in America and around the world participate in sports that originated in defensive training, and have done so for centuries. Examples include archery, summer and winter biathlon, boxing, javelin throwing, modern pentathlon, martial arts (such as aikido, judo, jiu jitsu, and tae kwon do), shooting, and wrestling.

Furthermore, the Second Amendment protects the right of private individuals to keep and bear arms for defense, which includes training for such purposes, and competition is an element of training. Such activities are not a privilege granted solely to members of the military or law enforcement agencies acting in an official capacity. The SWG may believe that only agents of government should be permitted to participate in marksmanship training for defense, but Congress thinks otherwise, having since 1903 authorized the National Matches, [69] the center-fire rifle courses of fire of which are designed to train private citizens to be able to use a rifle for defensive purposes.

In addition to the National Matches, the individual stages of the NRA's National Match Course, used for the organization's most popular national, regional, state, and local competitions for more than 100 years—were developed as a test of defensive rifle skills. Of course, promoting skill in the defensive use of firearms was central to the purposes for which the NRA—the nation's largest organization dedicated to shooting sports, training, and protection of the individual right to arms—was founded in 1871.

The Congress that adopted the Gun Control Act took an approving view of the importation of firearms that are useful for defensive purposes as well as for sporting purposes. Referring to the legislative language leading to § 925(d)(3), it said "The provisions concerning the importation of firearms would not interfere with the bringing in of currently produced firearms, such as rifles, shotguns, pistols, or revolvers of recognized quality which are used for hunting and for recreational purposes, *or for personal protection*."[70] (Emphasis added.)

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[69] In the 1903 War Appropriations Bill, Congress authorized the establishment of the National Board for the Promotion of Rifle Practice and the National Matches. In Public Law 149 of 1905, Congress authorized the sale, at cost, of surplus military rifles, ammunition, and related equipment to rifle clubs meeting requirements specified by the Board and approved by the Secretary of War. The National Defense Act of 1916 authorized the War Department to distribute arms and ammunition to organized civilian rifle clubs under rules established by the Board, provided funds for the operation of government rifle ranges, and opened all military rifle ranges to civilian shooters.

[70] S. Rep. 1097, *reprinted in* 1968 U.S.C.C.A.N. 2167.

**c. Sports evolve over time**

Congress did not intend § 925(d)(3) to limit the importation of firearms that were suitable or adaptable only for the organized shotgun sports that were popular in 1968. Even the SWG admits that "sporting purposes may evolve over time."[71]

Sports do evolve. For example, modern American football—with its brief, individual plays begun from a line of scrimmage, 10-yard "downs," and forward pass—evolved from 19th century hybrids of soccer and rugby that had none of those characteristics. The use of a ball as the centerpiece of a sport has also taken many other forms, such as baseball, basketball, billiards and pool, golf, ping-pong, racquetball, squash, tennis, and volleyball, all of which evolved after the conception of the first ball sport—whatever it was—many centuries ago.

Similarly, missile sports have evolved over many centuries from javelin throwing to archery to firearm shooting. In modern times, the shooting sports have evolved, as have firearms and their practical uses.

Traditional NRA and CMP courses of fire, used for the NRA National Championships and the CMP National Trophy Matches, call for shots between 200 and 600 yards, and some longstanding NRA competitions call for shots at 1,000 yards. Today, however, in training for the use of a rifle for defensive purposes, short-range shooting is emphasized as much as mid-range and long-range shooting. In addition to accuracy, the newer competitions emphasize speed. Firearms and firearm features have been developed to meet these short-range accuracy and speed requirements, and shooting sports testing those skills have correspondingly been developed. Held under the rules of several organizations, these competitions are informally referred to as "practical" shooting, to indicate that they are based upon marksmanship skills that have practical application beyond their use in a sport.

The shotgun sports of skeet, trap, and sporting clays replicate hunting scenarios, by hurling clay discs in paths similar to those followed by birds and small game animals in the field. Similarly, the rifle and handgun target shooting sport of "silhouette" uses targets shaped like game animals. Since those sports were conceived, however, the popular trend in target shooting sports for all three basic types of firearms—rifles, handguns, and shotguns—has been away from hunting-oriented scenarios or static tests of marksmanship, to sports that are oriented to defense.

There has been steady growth in the use of shotguns for practical shooting. Shotgun sports are easier for many people to engage in than rifle and handgun sports, because shotgun ammunition does not carry as far as rifle and pistol ammunition, and therefore less land is needed for shotgun sports. Practical shotgun target shooting also requires less in the way of target equipment, as compared to skeet, trap, and sporting clays, which require the purchase of clay target throwing machines. Also, generally speaking, a shotgun suitable for practical shooting costs less than a rifle or pistol designed for target shooting.

Indicative of the growth of practical shooting shotgun competitions, the variety of equipment for such competitions has increased dramatically, while innovations in other shotgun

[71] BATFE, *supra* note 11, at 5.

sports have trailed by comparison. Many of the innovations benefitting practical shotgun competitors are equally useful to hunters and law enforcement officers. Many have improved the ergonomics of shotguns and increased the speed with which they can be manipulated. Pistol-type grips, by definition found on all pistols, but also commonly in use on target shooting rifles for many years, are now in wide use by shotgun sportsmen, because they allow better control of the firearm during certain marksmanship challenges, and contribute to the safe manipulation of the shotgun.

The size of the magazine for a shotgun used in a practical shooting competition typically exceeds that for other shotgun sports, because practical shotgun courses of fire typically call for more than five shots against the clock. Many sporting shotguns today come equipped from the factory with muzzle compensators, some of which also serve as flash suppressors. These components reduce perceived recoil of the shotgun, which assists in the safe handling of a shotgun by those with less physical strength, including young shooters and people with disabilities.

Integrated rail systems allow shotgun sportsmen to attach backup sights, or flashlights for use when hunting at night. The general trend in firearm selection for practical shooting competitions has been towards heavier and bulkier firearms, since such firearms move less during recoil, contributing to the speed with which the competitor can shoot accurately.

Indicative of the popularity of practical shooting competitions, there are now more than 10 major national level three-gun competitions annually—in which shooters compete with shotguns, handguns and rifles—as well as many local competitions. The new National Defense Match program being introduced by the NRA will include shotgun and handgun components, along with the rifle component being fielded during this year's National Rifle Championships.

**B. "Readily adaptable to sporting purposes"**

The SWG, like the RWG, ignored § 925(d)(3)'s requirement that the BATFE approve the importation of firearms that are "readily adaptable to sporting purposes." At the very least, a firearm is "readily adaptable" to a sporting purpose if it can be modified to that purpose by the user, without special skills or tools, in a matter of minutes. Three examples serve to illustrate the point:

- A shotgun that is equipped with a rail system to which a flashlight is attached for hunting at night, or for defense within the home, can be readily adapted to daytime shooting sports simply by removing the flashlight.

- A magazine that holds more than five rounds, used in a shotgun for practical shooting competition or for home protection, can easily be plugged to hold fewer rounds or replaced with a smaller, when required by hunting regulations or when competing in other types of organized competitions.

- A forward grip, useful in practical shooting competitions and some hunting situations, can easily be removed, if that would make the shotgun more useful for other kinds of hunting or other shotgun sports. Each of these tasks and others like

> them, relating to some of the other features to which the SWG objects, takes only a few seconds to perform.

These examples also illustrate that the term "readily adaptable" does not mean "already adapted."[72] In 1998, the BATF attempted to nullify the "readily adaptable" criterion, asserting that the firearm must already be adapted and that it must also be particularly suitable for sporting purposes:

> Historically, the Secretary has considered the 'particularly suitable for or readily adaptable to' provisions as one standard. . . . If the Secretary allowed the importation of a firearm which is readily adaptable to sporting purposes, without requiring it actually to be adapted prior to importation, the Secretary would have no control over whether the adaptation actually would occur following the importation.[73]

However, the BATFE cannot legitimately erase the disjunctive "or" and claim that only one standard exists.[74] The word "or" is "a coordinating conjunction introducing an alternative; specif., a) introducing the second of two possibilities *[beer or wine]* . . . ."[75] The term "adaptable" means "1. that can be adapted or made suitable . . . ." and "adapt" means "to make fit or suitable by changing or adjusting."[76] The term "readily adaptable" excludes firearms that are not adaptable at all (such as inherently unsafe handguns) or that would be adaptable only with major effort. "Readily" means "without delay; quickly" and "without difficulty."[77]

In 1998, the BATFE complained, "If the Secretary allowed the importation of a firearm which is readily adaptable to sporting purposes, without requiring it actually to be adapted prior to importation, the Secretary would have no control over whether the adaptation actually would occur following the importation."[78] But that is a non sequitur. The statute says "readily adaptable," not "already adapted." Additionally, even if a firearm were "already adapted" for a sporting purpose, the BATFE would have no control over whether it was used for that purpose, nor whether it was "un-adapted" and used for the sporting purpose anyway, or for some other purpose.

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[72] *Trahan v. Regan*, 824 F.2d 96, 105 (D.C. Cir. 1987) (explaining "[i]t is not, nor has it ever been, acceptable for agencies to attempt to solve problems Congress has created by taking action that contravenes their own governing statutes. Congress writes the laws; the agencies must apply them as they are written and not as they should have been written in a perfectly coordinated legislative world").

[73] BATF, *Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles*, note 59 (1998).

[74] "That strained construction would have us ignore the disjunctive 'or' . . . . Canons of construction ordinarily suggest that terms connected by a disjunctive be given separate meanings . . . ." *Reiter v. Sonotone Corp*., 442 U.S. 330, 338-39 (1979). "'The cardinal principle of statutory construction is to save and not to destroy.' . . . It is our duty 'to give effect, if possible, to every clause and word of a statute,' . . . rather than to emasculate an entire section, as the Government's interpretation requires." *United States v. Menasche*, 348 U.S. 528, 539 (1955).

[75] *Webster's New World Dictionary* 951 (1991).

[76] *Id.* at 15.

[77] *Id.* at 1117.

[78] *See supra* note 73.

Furthermore, to interpret "adaptable" to mean "already adapted" is grammatically flawed, as it would render "readily" nonsensical. What does "readily already adapted" mean? Furthermore, does the BATFE suggest that Congress was concerned with how much time was spent, or what technical difficulty was encountered, by a foreign firearm manufacturer adapting a firearm to a sporting purpose before exporting it to the United States?

The term "readily adaptable to" is similar to the terms "can be readily restored" and "may be readily converted," also found in federal firearm laws.[79] None of these terms means that the item is *already* adapted, restored, or converted.

## II. "Military" or "law enforcement" usefulness does not affect a shotgun's importability

As noted above, the SWG took the position that a firearm that has even one feature that is suitable for military or law enforcement use is, by virtue of that factor alone, not suitable for or readily adaptable to sporting purposes:

> [T]hese features are *most* appropriate for military or law enforcement use. *Therefore*, shotguns containing *any* of these features are not particularly suitable for nor readily adaptable to generally recognized sporting purposes such as hunting, trap, sporting clay (sic), and skeet shooting.[80] (Emphasis added.)

> [T]he working group determined that certain shotgun features are <u>not</u> particularly suitable or readily adaptable for sporting purposes.[81] (Emphasis in the original.)

> [T]he working group determined that the following shotgun features and design characteristics are particularly suitable for the military or law enforcement, and *therefore*, offer little or no advantage to the sportsman.[82] (Emphasis added.)

But, as we noted, § 925(d)(3) does not condition a firearm's importability on the degree to which it might be useful for a military or a law enforcement purpose, but on whether the firearm is "generally recognized as particularly suitable for or readily adaptable to sporting purposes." It's also true that some firearms, including those that have the features to which the SWG objects, are useful for or adaptable to all three purposes.

There is no basis for the proposition that any firearm or firearm feature that is useful for a military or a law enforcement purpose is, by virtue of that fact alone, not suitable for or adaptable to any of the broad variety of sporting purposes of firearms. As recognized by the sponsor of the original legislation in which § 925(d)(3) was contained, countless hunters have adapted surplus military rifles for use in hunting. One of the most popular commercially produced bolt-action hunting rifles in this country over the last century, the Winchester Model 70, is derived from the military Model 1898 Mauser.

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[79] *See* 26 U.S.C. §§ 5845(b)-(d) (2011) (defining machinegun, rifle, shotgun); 18 U.S.C. § 921(a)(3)(A) (2011) (defining "firearm").
[80] BATFE, *supra* note 11, at iv.
[81] *Id.*
[82] *Id.* at 9.

For over a century, the U.S. government has sold surplus military firearms to private citizens for use in target shooting practice and competitions, and such rifles have been the most commonly used for target shooting competitions. The military and law enforcement agencies have adopted some rifles, shotguns, and pistols only after those firearms were in widespread use by private citizens for sporting purposes.[83] Would the SWG suggest that Winchester and Remington rifles and shotguns cease to be "sporting" once those firearms are adopted by the military and law enforcement agencies?

Regardless, the legislative history of the Act demonstrates that a "military" feature is not inconsistent with sporting purposes. As originally passed in the Omnibus Crime Control and Safe Streets Act of 1968, § 925(d)(3) provided for importation of a firearm that "is generally recognized as particularly suitable for or readily adaptable to sporting purposes, and in the case of surplus military firearms is a rifle or shotgun . . . ."[84]

Furthermore, the SWG's one-feature disqualification method is in stark contrast to the approach the RWG used in 1989 with respect to rifles, and more restrictive than the Handgun Factoring Criteria that the BATFE has for many years generally used to determine which handguns it must approve for importation.

In 1989, the BATF banned the importation of 43 makes and models of semi-automatic rifles that it had previously approved for importation, in some cases for many years. Rifles that the BATF banned were those that had multiple features and characteristics of what the RWG called an "assault type rifle." Seven of the 10 features listed by the SWG are identical or essentially identical to the features listed by the RWG in 1989.[85] The RWG's report[86] explaining the rationale for the rifle ban, said that it considered each rifle model individually, in terms of the *totality* of its features and characteristics:

> This is not to say that a particular rifle having one or more of the listed features should necessarily be classified as a semiautomatic assault rifle. . . . Thus, the criteria must be viewed in total to determine whether the overall configuration places the rifle fairly within the semiautomatic assault rifle category.[87]

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[83] *E.g.*, the Remington Model 870 shotgun, the Winchester Model 70 rifle, the Remington Model 700 rifle, and the SIG P226 and P228 pistols.

[84] Pub. L. 90-351, 82 Stat. 197, 234 (1968).

[85] Folding or telescoping stock, flash suppressor, bayonet mount, ability to use a large or drum magazine, a light enhancing device and an integrated rail (typically used to attach lights or forward grips (the RWG named "night sights"), and "grenade launcher mount" (the RWG named "grenade launcher"). Both references to "grenade launchers" were largely for propaganda effect, since grenades and grenade launchers are restricted by the NFA.

[86] BATF, *supra* note 16, at 9.

[87] BATF named the following features and characteristics: Ability to accept a detachable magazine, folding or telescoping stock, pistol grip, ability to accept a bayonet, flash suppressor, bipod, grenade launcher (meaning a flash suppressor to which a grenade launching platform can be affixed, but not meaning a device that is itself capable of launching a grenade, but which is also attached to a rifle), and night sights (meaning "glow-in-the-dark" type conventional iron sights), whether the firearm is a semi-automatic version of a selective-fire rifle, and whether the rifle is designed to use a centerfire cartridge case of 2.25 inches or less length. *Id.* at 6-9

The RWG believed that a rifle could have one or more of the features in question and still be eligible for importation. As examples, it noted that some "traditional semiautomatic sporting firearms" can use *detachable ammunition magazines*, that a "*folding stock* makes it easier to carry the firearm when hiking or backpacking," that some *flash suppressors* "also serve to dampen 'muzzle climb . . . allowing the [sport] shooter to reacquire the target for a second shot," that "*bipods* are available as accessory items for sporting rifles and are used primarily in long-range shooting to enhance stability," and that "many traditional sporting rifles will fire a *cartridge of 2.25 inches or less*."[88] (Emphases added.)

For that reason, the BATF allowed the importation of the Valmet Hunter, which has a firing hand grip integral to the stock, while banning the importation of the functionally identical Valmet that has a grip separate from the stock. The RWG banned the importation of rifles only if they had more than one of the above-mentioned features and certain other features it considered indicative of an "assault type rifle."

Likewise, to determine whether a handgun is eligible for importation, the BATFE normally uses its longstanding Handgun Factoring Criteria system, according to which handguns become eligible for importation by scoring points based on multiple features and characteristics. A handgun may be importable even if it fails to achieve points for one feature, so long as it gets enough total points for other features.

In contrast to the multi-feature RWG and Handgun Factoring Criteria approaches, the SWG recommends that any shotgun possessing even one of the features named by the SWG should be prohibited from importation.

Further, whereas the RWG and 1993 pistol bans were limited to semi-automatic firearms, the SWG proposes to ban the importation of any shotgun that has one or more of the listed features, which would most notably include pump-action shotguns as well as semi-automatics:

> [I]t is the recommendation of the working group that *shotguns* with any of the characteristics or features listed above not be authorized for importation.[89] (Emphasis added.)

The SWG's recommendation that all shotguns, regardless of their firing mechanism, be disqualified on the basis of a single feature reflects the trend in so-called "assault weapon" legislation supported by the most extreme opponents of the Second Amendment in Congress. In 1994, the federal ban on the new manufacture, for civilian possession, of "assault weapons" was imposed, defining such firearms to include those that had two or more specified features. However, in 2003, a year before the ban expired, legislation was introduced to extend the ban to firearms that had even one of the features.[90] Similarly, the SWG's proposal to ban pump-action shotguns as well as semi-automatics reflects gun prohibition supporters' current support for legislation that would ban not only the importation, but also the domestic production, of pump-

[88] *Id.*
[89] *Id.* at 14.
[90] H.R. 2038, 108th Cong. (2003) (introduced by U.S. Rep. Carolyn McCarthy (D-N.Y.)).

action rifles and shotguns, under the inflammatory and ever-broadening "assault weapon" label.[91]

Shifting from a focus on what it considered "military" firearm features, to military firearms themselves, the SWG, like the RWG, sought validation in a statement by Sen. Dodd, that "if a military weapon is used in a special sporting event, it does not become a sporting weapon." But Sen. Dodd also noted that the National Matches and National Championships, at which military and military surplus rifles are the most commonly used, constituted a "sporting purpose." Sen. Dodd also agreed that "If a gun, a rifle, a shotgun, or a handgun is useful for a 'sporting purpose,' there is no prohibition against its importation." And, as noted, he endorsed the importation of military surplus Enfields and Mausers.

But Sen. Dodd also claimed that a military surplus .45 caliber handgun was not "a genuine sporting gun," because it is "not used in skeet shooting or trapshooting," adding that "the handgun that would be importable as a sport gun is one that is generally suited for . . . skeet shooting, and trapshooting . . . ." Of course, as anyone with a rudimentary understanding of shooting sports knows, skeet and trap shooters use shotguns, not handguns.

Regardless of what one makes of Sen. Dodd's varied statements, they are unnecessary to consider, given the unambiguous language of § 925(d)(3).

**Ten shotgun features**

**1. Folding or Telescoping Stock**. The SWG incorrectly took the position that a shotgun that is otherwise useful for or adaptable to a sporting purpose should be disqualified from importation if it possesses a folding, telescoping or collapsible stock. The mere fact that such a stock can benefit military personnel does not render it useless for sporting purposes.

In fact, such stocks are commonly used in shooting sports. For example, in last year's National Rifle Championships, a record 2,396 out of a possible 2,400 points was set by a competitor whose rifle was equipped with a telescoping stock.[92] Also, as the RWG noted in 1989, a folding stock can be of use to a hiker or backpacker,[93] and for the same reason could be useful to a hunter trekking over long distances. It defies logic to think that a folding stock on a rifle can be useful for hikers, backpackers or hunters, while the same stock would render any shotgun completely unsuitable and unadaptable for sporting purposes.

Also unconvincing is the SWG's distinction between telescoping stocks that have "adjustable buttplates, adjustable combs, or other designs intended only to allow a shooter to . . . improve the overall 'fit' of the shotgun," and those that have those attributes and also "make a

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[91] *See* Legal Community Against Violence, *Banning Assault Weapons: A Legal Primer for State and Local Action*, 49 (April 2004) *available at* http://www.lcav.org/publicationsbriefs/reports_analyses/Banning_Assault_Weapons_A_Legal_Primer_8.05_entire.pdf (last visited April 29, 2011); Donna Dees-Thomases & Carolynne Jarvis, *Why wait to tackle gun violence: Germany's timely action should serve as example for America*, DETROIT FREE PRESS, Aug. 8, 2002.

[92] National Rifle Association, *SGT Sherri Gallagher Wins 2010 NRA National High Power Rifle Championship*, http://www.nra.org/Article.aspx?id=15894 (last visited April 29, 2011).

[93] BATF, *supra* note 16, at 7.

shotgun more portable."[94] Many firearms that are unquestionably used for hunting and other sports, such as double-barreled shotguns and "take down" hunting rifles, can be separated into pieces for ease of transport.

**2. Bayonet mount.** The SWG incorrectly took the position that a shotgun that is otherwise useful for or adaptable to a sporting purpose should be disqualified from importation if it possesses a bayonet lug. This is more than a little curious, given that the BATF previously approved the importation of a shotgun equipped not only with a bayonet *mount*, but with a bayonet as well.[95] Even when present on a shotgun, a bayonet mount is a tiny fixture that adds an imperceptible amount of weight. Thus, it does not detract from the suitability of the shotgun to a sport, any more than a trailer hitch on a pickup truck renders the truck unsuitable for driving to the grocery store.

While bayonet lugs on shotguns are not particularly common, they are ubiquitous on rifles that have been the most commonly used for the NRA National Rifle Championships, the Civilian Marksmanship Program National Matches, and the regional, state, and local competitions. They are also present on Enfield and Mauser military rifles, the importation of which was endorsed by Sen. Dodd.

The SWG said "The working group discovered no generally recognized sporting application for a bayonet on a shotgun,"[96] but the point is irrelevant. The law does not require that every feature of a firearm be suitable for or adaptable to a sporting purpose, in order for the firearm to be importable. It requires that the *firearm* be suitable for or adaptable to a sporting purpose. A feature disqualifies a firearm from importation only if it renders the firearm not suitable for *and* not adaptable to all sporting purposes.

**3. Flash suppressor.** The SWG incorrectly took the position that a shotgun that is otherwise useful for or adaptable to sporting purposes should be disqualified from importation if it possesses a flash suppressor. A flash suppressor can assist the user in a defensive situation, but its inclusion on a shotgun does not, in and of itself, render a shotgun unsuitable for and not adaptable to sporting purposes, including those sports that the SWG recognized.

While the SWG recognized that compensators have a sporting use—"because they allow the shooter to quickly reacquire the target for a second shot"[97]—it erred in claiming that "Traditional sporting shotguns do not have . . . compensators." Cutts Compensators have been found on shotguns used for what the SWG calls "traditional" shotgun sports for over half a century.[98]

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[94] BATFE, *supra* note 11, at 9.
[95] "The Rossi, 12 gauge, Overland, double barrel shotgun, Serial Number [deleted] 18-1/4 inch barrels and an overall length of 35 inches with attached folding bayonet may be imported as a sporting purpose firearm." Letter to importer [name deleted] from A. Atley Peterson, Acting Assistant Director (Technical and Scientific Services), BATF, March 11, 1977.
[96] BATFE, *supra* note 11, at 9.
[97] *Id.*
[98] ELMER KEITH, SHOTGUNS BY KEITH, 129-33 (Odysseus Editions Inc. 1995) (1950).

Furthermore, the SWG incorrectly took the position that a compensator-equipped shotgun that would otherwise be considered importable should be disqualified from importation if its compensator also functions as a flash suppressor. It said, "compensators that, in the opinion of ATF, actually function as flash suppressors are neither particularly suitable nor readily adaptable to sporting purposes."[99]

However, as we noted before, § 925(d)(3) does not condition a firearm's importability on whether the firearm or any one or more of its features are useful or adaptable to some non-sporting purpose; it conditions a firearm's importability on whether the firearm is useful for or adaptable to a sporting purpose. If a muzzle compensator is not grounds for disqualifying a shotgun for importation, neither should be a muzzle compensator that also suppresses flash. Certainly a device that serves sporting and other purposes is inherently "readily adaptable" to sporting purposes, if it serves multiple purposes or can be readily removed, modified or adjusted.

**4. Magazine size and type**. The SWG incorrectly took the position that a shotgun that is otherwise useful for or adaptable to a sporting purpose should be disqualified from importation if it possesses a magazine of over five rounds or a drum magazine (which typically holds more than five rounds). The SWG failed to acknowledge that magazines that hold larger numbers of rounds for some sports, such as "practical shooting," can be easily replaced at the push of a button with magazines that hold smaller numbers of rounds, or can be plugged with a run-of-the-mill dowel acquired at the local home improvement store for other sports.

Illustrating this, most tubular magazine shotguns used for the activities that the SWG recognizes as "sports" are capable of holding more than the three-round limit imposed by federal law on shotguns used for waterfowl hunting, but are plugged to hold only two rounds in the magazine (in addition to the round in the chamber.

The SWG says "The majority of state hunting laws restrict shotguns to no more than 5 rounds," but this is true only for certain species. Some species can be hunted without restriction as to magazine capacity. For example,the U.S. Fish and Wildlife Service authorizes the taking of snow geese throughout the U.S., during a special season, with no bag limit or restriction on magazine capacity.[100]

The SWG's conclusion that there is "no appreciable difference between integral tube magazines and removable box magazines" also contradicts the BATFE's decision in 1998 to prohibit the importation of various rifles because they are capable of using removable box magazines.

**5. "Grenade launcher mount."** The SWG incorrectly took the position that a shotgun that would otherwise be considered useful for or adaptable to a sporting purpose should be prohibited from importation if it possesses a "grenade launcher mount," without explaining that grenades and grenade launchers are controlled items under the NFA and have been for many years.

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[99] BATFE, *supra* note 11, at 10.
[100] 50 C.F.R. § 21.60 (2011).

Since, as the SWG notes, one type of such a mount "attaches to the barrel of the firearm either by screws or clamps,"[101] and thus may easily be removed, such a feature still allows a shotgun to be readily adaptable to sporting purposes.

**6. Integrated rail.** The SWG incorrectly took the position that a shotgun that would otherwise be considered useful for or adaptable to a sporting purpose should be disqualified from importation if it is equipped with an integrated rail system. While recognizing the sporting use of a rail mounted atop a shotgun's receiver or barrel, to which aiming sights can be affixed, the SWG claimed that a rail mounted alongside or underneath the barrel transforms the character of a shotgun from "sporting" to "non-sporting," because "accessories or features with no sporting purpose, including flashlights, foregrips, and bipods" can be attached to such rails[102]. The SWG's error in believing that flashlights and foregrips have no sporting purpose is addressed in items 7 and 10, below. Bipods are undeniably suitable for sporting purposes, as demonstrated by their widespread use for certain varieties of hunting and target shooting competitions.

**7. Light enhancing device.** The SWG incorrectly took the position that a shotgun that would otherwise be considered useful for or adaptable to a sporting purpose should be disqualified from importation if it is equipped with a "light enhancing device" which can be removed in seconds without special skills or tools.

The SWG's statement that "Devices or optics that allow illumination of a target in low-light conditions are generally for military and law enforcement purposes," says nothing about the use of flashlights for sporting purposes. The SWG's statement that flashlights "are not typically found on sporting shotguns because it is generally illegal to hunt at night"[103] is simply false. Many states allow the use of a flashlight to hunt certain species, such as coyote and wild boar, at night.[104]

The SWG's claim that "Devices or optics that allow illumination of a target in low-light conditions are generally for military and law enforcement purposes"[105] is false because private citizens also use devices such as flashlights for home protection. Even if it were true, it would be irrelevant, because § 925(d)(3) does not condition a firearm's importability on whether one of its features is useful for a military or law enforcement purpose.

**8. "Excessive" weight.** The SWG incorrectly took the position that a shotgun that would otherwise be suitable for or adaptable to a sporting purpose should be disqualified from importation if it weighs more than 10 pounds. The SWG said, "Unlike sporting shotguns, military firearms are larger, heavier, and generally more rugged."[106] In addition to being irrelevant, for reasons noted several times before, the SWG's "military" claim is in this instance false. Military shotguns are not generally larger; they are generally shorter. Military shotguns are

[101] BATFE, *supra* note 11, at 11.
[102] BATFE, *supra* note 11, at 11.
[103] *Id.*
[104] *See, e.g.*, New York State Furbearer Hunting Regulations, http://www.dec.ny.gov/outdoor/45559.html (last visited April 29, 2011) ("Furbearer Hunting . . . . You may hunt furbearers at night, with or without a light . . . [using] a shotgun loaded with shot (any size)").
[105] BATFE, *supra* note 11, at 11.
[106] *Id.* at 12.

not generally *more* rugged; they are *equally* rugged, because the military mostly uses shotguns that first became popular among private citizens, such as Mossbergs and Remingtons.

**9. "Excessive" bulk.** The SWG incorrectly took the position that a shotgun that would otherwise be considered useful for or adaptable to a sporting purpose should be prohibited from importation if it is greater than three inches in width and/or greater than four inches in depth. The SWG said that such shotguns may have "increased durability,"[107] and incorrectly suggested that increased durability is desirable only to those who would use shotguns for "combat" purposes.

To the contrary, durability is a high priority to individuals who practice extensively for shotgun target shooting sports; such sportsmen expend much larger quantities of ammunition than most military personnel and others who practice with shotguns for non-sporting purposes.

**10. Forward grip.** Undercutting the RWG's position that a pistol-type grip should contribute to disqualifying a rifle from importation, the SWG said "the working group believes that pistol grips for the trigger hand are prevalent on shotguns and are therefore generally recognized as particularly suitable for sporting purposes."[108] Also undercutting the RWG's position, such grips are more common than any other in the NRA National Championships, CMP National Trophy Matches, and the local, state, and regional competitions that precede the national events each year.

But while endorsing such grips for the user's firing hand, and acknowledging that when used by the support hand "The ergonomic design allows for continued accuracy during sustained shooting over long periods of time," the SWG inexplicably said, "This feature offers little advantage to the sportsman."[109] The statement is odd, because many sport shooters fire much more ammunition in a given period of time than military or law enforcement personnel.

## III. Conclusion

A law that conditions the importation of firearms on their usefulness for sports is unconstitutional. The Second Amendment protects the right to keep and bear arms for defensive and other purposes.

However, for as long as § 925(d)(3) is law, the BATFE should administer it as Congress intended: to provide for the importation of all firearms that are "of a type . . . generally recognized as being particularly suitable for or readily adaptable to sporting purposes." By "type," Congress meant to distinguish between rifles, pistols and shotguns that meet that sporting purposes requirement; it did not mean to distinguish between firearms of the same general type based on minutiae, such as the presence or absence of one feature on the SWG's list of 10 features.

By "sporting purposes," Congress meant all forms of competitive and recreational or non-competitive target shooting, and hunting. By "suitable for," Congress did not mean

[107] *Id.*
[108] *Id.*
[109] *Id.*

"designed for no other purpose than"; it recognized that a firearm could be useful for multiple purposes. By "readily adaptable," Congress meant "adaptable with minor effort"; it did not mean "already adapted."

The law was intended to generally provide for the importation of rifles and shotguns, which were assumed to inherently be useful for sporting purposes, and to exclude only those handguns that, due to design, were not particularly suitable for sports.

The law does not prohibit the importation of firearms that could be useful for or adaptable to *military or law enforcement* purposes, or firearms that have one feature that might be useful for a *military or law enforcement* purpose. The law provides for the importation of those that are useful for or adaptable to *sporting* purposes, without regard for their possible military or law enforcement use. Similarly, the law does not prohibit the importation of a firearm that has one feature that might have a military or law enforcement use. It prohibits the importation of firearms that possess features that render a firearm unsuitable for sporting purposes, and which cannot be removed to adapt the firearm to sporting purposes.

Following the BATFE's practice since 1989, the SWG disregarded the unambiguous language of § 925(d)(3) and disregarded Congress' intention in passing that law. It disregarded the common meaning of words to construct an ad hoc standard in an attempt to justify banning the importation of firearms that meet the standard established in § 925(d)(3).

It took the position that the most common forms of recreational sport shooting, as well as a popular form of competitive target shooting, are not "sporting purposes." It disregarded the language of the law in favor of a single statement from the law's legislative history, though that statement is contradicted not only by the law itself, but also by the majority of relevant information from that history.

While the BATFE has previously held firearms to a multi-feature standard, the SWG proposed to ban a shotgun from importation on the basis of just one feature, including features that are in common use by sport shooters.

Following the agency's practice since 1989, the SWG ignored the law's requirement that the BATFE approve the importation of firearms that are "readily adaptable to sporting purposes," incorrectly taking the position that "readily adaptable" means "already adapted."

The BATFE should reject the conclusions and recommendation of the SWG, reverse its erroneous prohibitions on the importation of various rifles and handguns in 1989, 1993, and 1998; and establish a uniform structure for evaluating firearms for their importability under § 925(d)(3). That standard should reflect Congress' intent to provide for the importation of all firearms that are not regulated by the NFA, not surplus military firearms, and not unsuitable for or not adaptable to sporting purposes, by virtue of poor design or being in unserviceable condition.