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United States Senate

COMMITTEE ON FOREIGN RELATIONS

WASHINGTON, DC 20510-6225

December 10, 2019

The Honorable Mike Pompeo
Secretary of State
U.S. Department of State
2201 C Street, N.W.
Washington, D.C.

Dear Secretary Pompeo:

On February 4, 2019, I received congressional notification from the Department, pursuant to the authority of section 38(f) of the Arms Export Control Act (AECA), for the proposed transfer of responsibility for the export control of firearms and ammunition from the United States Munitions list (USML) to the Commerce Control List (CCL). I wrote to inform you on February 22 that I was placing a hold on that congressional notification. On November 12, 2019, the Department submitted a new 38(f) notification in response to a proposed regulatory change by the Department of Commerce. I write to inform you that I am placing a hold on the November 12, 2019 notification for the reasons detailed below.

As you no doubt are aware, firearms and ammunition – especially those derived from military models and widely in-use by military and security services - are uniquely dangerous. They are easily modified, diverted, and proliferated, and are the primary means of injury, death, and destruction in civil and military conflicts throughout the world. As such, they should be subject to more rigorous export controls and oversight, not less.

Combat rifles, including those commonly known as “sniper rifles,” should not be removed from the USML, nor should rifles of any type that are U.S. military-standard 5.56 (and especially .50 caliber). Semi-automatic firearms should also not be removed, and neither should related equipment, ammunition, or associated manufacturing equipment, technology, or technical data.

My hold will remain in place until such time as the issue identified below is sufficiently addressed.

1) Removal of Firearms Exports from Congressional Information and Review

The AECA provides for congressional review of exports of lethal weapons to ensure that they comport with U.S. foreign policy interests. As you know, Congress took action in 2002 to ensure that the sale and export of these weapons would receive closer scrutiny and oversight, including by amending the AECA to set a lower congressional reporting threshold (from \$14 million to \$1 million) specifically for firearms on the USML. Moving such firearms from the USML to the CCL would effectively eliminate congressional oversight of exports of these weapons by eliminating this congressional reporting requirement, and would be directly contrary to congressional intent.

To that end, I reiterate my demand from my previous letter: the Senate Foreign Relations and House Foreign Affairs committees must be immediately informed of any proposed license to export firearms formerly controlled on the USML at the appropriate dollar threshold mandated in the Arms Export Control Act. This concern must be satisfactorily addressed before I will lift my hold.

2) Proliferation of 3D Gun Printing Technical Information

In my February letter, I expressed that there is a serious risk that this transfer will open the floodgates of information for the 3D printing of nearly-undetectable firearms and components by foreign persons and terrorists that intend to harm U.S. citizens and interests. The Department of Commerce claimed that it could not, by its own regulations, prevent the publication, including on the Internet for global consumption, of technical information and blueprint files that would enable this 3D production, if such information has once been published, even illegally. I wrote that:

Ultimately, the specific provision of the Export Administration Regulations that is cited as preventing Commerce from controlling the publication of 3D Printed guns in the longer term needs to be rewritten to permit this control. Until that occurs, or until Commerce determines that such technical information can and will be controlled, this technical information cannot and should not be transferred from USML to the CCL.

I understand that the Department of Commerce has now decided to alter its regulations to address this concern; technical information related to the manufacture of firearms, to include 3D-printing information, proposed for transfer to the CCL will be prohibited from publication or Internet posting without a license. That does seek to address my previously-expressed concern, and I will not insist on this to lift my hold. However, I note that this improvement could easily be undone through a simple regulatory change in the future that would not even require congressional notification or review; a statutory authority to maintain such licensing, or better yet, an outright prohibition, may be required. Moreover, Commerce must maintain a policy of "presumption of denial" for any license application sought to publish or post such information, and pursue any violations vigorously.

Sincerely,



Robert Menendez
Ranking Member