

ARMED

Legal News From the Nation's Capital

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THE "SPORTING PURPOSES" TEST FOR IMPORTED FIREARMS

Security's Customs and Border Protection (CBP). This article focuses on the "sporting purposes test" under the import provisions of the Gun Control Act of 1968 (GCA), which most firearms must satisfy to be imported for unrestricted commercial sale.

I. Legal Background

Since 1968 the GCA has included import criteria for firearms codified in 18 U.S.C. § 925(d)(3). This provision requires, in pertinent part, the Attorney General authorize a firearm to be imported if the firearm is of a type that is not regulated under the National Firearms Act (e.g., machine gun, short barrel rifle, short barrel shotgun, silencer, destructive device, or other concealable weapon); is not a surplus military firearm; and is **generally recognized as particularly suitable for or readily adaptable to sporting purposes**.

The language highlighted in bold above will be the focus of this article. There is a lot of history and meaning packed into the "sporting purposes" language above, with a significant amount of agency explanation to assist in clarifying it. (This article addresses only

the sporting purposes language in 18 U.S.C. § 925(d)(3). The restrictions under 18 U.S.C. § 922(r) on assembly of semiautomatic rifles and shotguns from imported parts, which is identical to any rifle or shotgun prohibited from importation, is beyond the scope of this article.)

II. History

Legislative history for the GCA indicates the primary concern of Congress regarding firearm imports was small, cheaply made handguns referred to at that time as "Saturday Night Specials." Although there are references to rifles and shotguns in the legislative history, Congress did not specifically mention a concern about so-called *nonsporting* rifles and shotguns entering the United States. Rather, their focus was to prohibit the importation of surplus military firearms, including rifles and shotguns. (See S. Rep. No. 1097, 90th Cong. 2d Sess. 80, 1968 U.S. Code Cong. and Admin. News 2112, 2167.) Readers may recall that President Kennedy was assassinated in 1963 with a surplus military rifle imported from Italy. This seminal event in history was one of the catalysts for the import controls imposed on firearms under the GCA.

Consistent with the direction given by Congress, the first steps the Treasury Department took to implement the "sporting purposes" test was developing criteria for sporting revolvers and pistols. The Factoring Criteria, ATF Form 4590, were developed by a panel of experts that included government and non-government experts. This system for evaluating handguns was put into place by Treasury within months of enactment of the GCA. The panel did not propose criteria for evaluating rifles and shotguns under the sporting purposes test, likely because long guns imported prior

Federal firearms licensees who wish to import firearms into the United States for commercial sale must navigate a complicated Federal system of laws administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Department of Homeland

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to 1968 were primarily manually operated long guns with fixed magazines that were indisputably sporting firearms. Accordingly, in 1968 there was no reason to develop sporting criteria for rifles and shotguns.

In fact, prior to 1984, ATF disqualified few, if any rifles or shotguns from importation under the GCA sporting purposes test. In 1984 ATF classified the Striker-12/Streetsweeper shotgun as nonsporting, holding that the 12-gauge revolving cylinder shotgun had a capacity of 12 rounds and was designed and developed in South Africa as a military, security, and anti-terrorist weapon. Then, in 1986 ATF classified the USAS-12 shotgun as nonsporting on the basis that its weight, bulk, designed magazine capacity, and other features indicated it was a military-type shotgun that was not particularly suitable for sporting purposes. Litigation challenging ATF's classification of the USAS-12 shotgun was unsuccessful. (*Gilbert Equipment Company, Inc. v. Higgins*, 709 F. Supp. 1071 (S.D. Ala. 1989), *aff'd without opinion*, 894 F.2d 412 (11th Cir. 1990)).

In 1989 ATF made its first classifications of nonsporting rifles when it

suspended, then banned, the importation of a number of "semiautomatic assault rifles." The classifications were made immediately following a schoolyard shooting in Stockton, California, where the perpetrator used an AK-type rifle. On July 6, 1989, ATF banned the importation of 19 named models of rifles, including AKS variants, FAL variants, and other specified types of rifles. The basis for the classifications of these rifles as nonsporting was centered on certain characteristics common to modern military assault rifles that distinguish them from traditional sporting rifles. ATF subsequently extended the ban to cover over 40 types of semiautomatic rifles. ATF set out its criteria in the 1989 "Report and Recommendation on the Importability of Certain Semiautomatic Rifles," available on ATF's website.

A number of importers filed suit challenging ATF's 1989 classifications of certain rifles as nonsporting, but again the courts showed deference to ATF and upheld the government's classifications. (See, e.g., *Gun South v. Brady*, 877 F.2d 858 (11th Cir. 1989)).

Subsequent to ATF's 1989 classifications of certain rifles as nonsporting,

several manufacturers modified certain models to remove all of their military features except the ability to accept a detachable magazine. For a brief time, such modified rifles were lawfully imported into the United States. However, on November 14, 1997, President Clinton ordered a review of the importation of the modified versions of the rifles into the United States. On April 6, 1998, ATF issued a report announcing that the modified versions of the rifles could no longer be imported under the sporting purposes test. (See "Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles," available on ATF's website).

Shortly thereafter in the 1990s, ATF began denying applications to import shotguns if they had (1) a capacity of more than 5 rounds; (2) a bayonet; or (3) a folding or telescoping stock. The reason was that any one of the foregoing criteria were considered disqualifying under the sporting purposes test.

In 2011 ATF published the first comprehensive discussion of its criteria for evaluating shotguns for importation. The document, titled "ATF Study on the Importability of Certain Shotguns" listed

by Scott Novzen and Robert Segel

"If my bonehead brother doesn't know the difference between a Vickers lock and a Maxim lock by now, Dad is gonna have a fit."



ten features, any one of which resulted in the shotgun being nonsporting and therefore ineligible for importation. ATF received an astounding 21,000 public comments to this study. On July 2, 2012, in response to the comments, ATF published a follow-up report modifying the criteria published in 2011 by removing two features. (See *"Update-Report on the Importability of Certain Shotguns."*) ATF's criteria for evaluating sporting shotguns are set forth below.

III. How ATF Applies the Sporting Purposes Test to Handguns, Rifles, and Shotguns

A. Criteria for Handguns

ATF Form 4590, Factoring Criteria for Weapons, has been used by ATF and its predecessor agency, the Internal Revenue Service, from 1968-present to evaluate pistols and revolvers for importation under the sporting purposes test of the GCA. The form awards points for length, barrel length, frame construction, weapon weight, caliber, and safety

features. Revolvers must also pass a safety test that requires a safety feature that causes the hammer to retract to a point where the firing pin does not rest on the primer of the cartridge. ATF performs a drop test with the revolver that involves the revolver being secured in a metal vise and dropped from a distance of 36 inches a total of 5 times. The factoring criteria have been criticized because they allegedly favor heavy, bulky handguns; they rely on outdated safety features; and they are overly focused on frame construction. ATF has been reluctant to change the Factoring Criteria, because they have withstood the test of time, are well understood by the firearms industry, and changes would likely require notice and comment rulemaking under the Administrative Procedure Act. The bottom line is that the Factoring Criteria will likely remain in place for evaluating handgun importability for the foreseeable future.

B. Criteria for Rifles

As stated above, there are two ATF

studies on sporting purposes as that term is applied to rifles; the first published in 1989 and the second in 1998. The 1998 study modified the criteria announced in the 1989 study, and we will focus on the more recent criteria. In the 1998 study, titled *"Department of the Treasury Study on the Sporting Suitability of Modified Semiautomatic Assault Rifles,"* ATF specified the following criteria for determining whether a semiautomatic rifle is a nonsporting rifle: (1) the rifle is a semiautomatic version of a machine gun; (2) the rifle is chambered to accept a centerfire cartridge case having a length of 2.25 inches or less; and (3) the rifle has one or more of the following military features:

- Ability to accept a detachable magazine with a capacity of more than 10 rounds
- Folding or telescoping stock
- Separate pistol grip
- Ability to accept a bayonet
- Flash suppressor
- Bipod

- Grenade launcher
- Nightsights

C. Criteria for Shotguns

As revised in its 2012 report, the criteria adopted by ATF for nonsporting shotguns are the following:

- Folding, telescoping, or collapsible stock
- Bayonet lug
- Flash suppressor
- Magazine over 5 rounds or a drum magazine
- Grenade launcher mount
- Light enhancing device
- Excessive weight (greater than 10 pounds for 12-gauge or smaller)
- Excessive bulk (greater than 3 inches in width and/or greater than 4 inches in depth)

Any one of the above criteria render a particular shotgun nonsporting and ineligible for importation into the U.S. for commercial sale.

IV. Conclusion

The criteria ATF uses to evaluate handguns, rifles and shotguns under the sporting purposes test of the GCA are set forth in detail on the agency's website. To avoid issues in lawful importation of firearms into the United States, importers should ensure their understanding of the sporting purposes test is thorough and up-to-date.

ATF has broad discretion to interpret the sporting purposes test, and it is apparent the agency can and will revisit its interpretation when it sees fit. ATF has never defined the term "sporting" and courts will defer to ATF, the agency responsible for implementing the GCA, to determine what firearms may and may not be imported. Indeed, legal challenges to ATF's interpretation of the statute and classifications of firearms under the sporting purposes test have been unsuccessful to date. It is for these reasons that importations of firearms under the sporting purposes test remains the low-hanging fruit for any administration that wishes to enact stricter gun control. Unless Congress takes steps to change the language of Section 925(d)(3), the sporting purposes test will remain a significant obstacle for importers indefinitely.

*The information in this article is for informational purposes only and is not intended to be construed or used as legal advice. **SAR***



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