

Report on the Importability of Certain Shotguns

July 2, 2012

The Gun Control Act of 1968 (GCA) generally prohibits the importation of firearms into the United States. However, pursuant to 18 U.S.C. § 925(d), the GCA creates four narrow exceptions under which the Attorney General shall authorize firearms for importation. Under one such category, section 925(d)(3), the Attorney General shall approve applications for importation when the firearms are generally recognized as particularly suitable for or readily adaptable to sporting purposes (the “sporting purposes test”).

ATF has long approved the importation of shotguns under section 925(d)(3). However, although ATF previously provided guidance on the sporting purposes test in regard to rifles and handguns, it had provided no such guidance for the importation of shotguns. Prior to publication of the “ATF Study on the Importability of Certain Shotguns” in January 2011 (the 2011 report), there was no definitive guidance to the firearms industry or to the public regarding the standards for the importation of shotguns under this exception. Although shotguns were regularly imported, licensees were forced to rely upon private correspondence from ATF or previously approved applications as guidance on whether a particular shotgun would be approved for importation. Importers could assume that previously approved shotguns satisfied the sporting purposes test, but any changes to the configuration of these shotguns might result in disapproval of an import application. To complicate matters further, although shotguns had retained classic sporting configurations for decades, importers recently sought to import firearms utilizing features typically found on military *rifles*. ATF recognized this and determined that, commensurate with its responsibilities to enforce the law as written, it was necessary to provide guidance on this topic. The resulting 2011 report provides the necessary guidance for importers and the public.

Following publication of the 2011 report, from January 31, 2011 through May 1, 2011, ATF accepted comments from the public and members of the firearms industry regarding the determinations made in the report. ATF has reviewed the comments and, in an effort to provide guidance on the sporting suitability of shotguns, provides the following information to revise the January 2011 report.

Public Comments

ATF received approximately 21,000 individual comments on the 2011 report. Many of the commenters argued, in effect, that 18 U.S.C. 925(d)(3) was unconstitutional and that the sporting purposes test was invalid, or questioned ATF’s interpretation of the sporting purposes test as it was applied to shotguns. Several commenters argued that although the report stated that certain features were not particularly suitable for or readily adaptable to sporting purposes, the features allowed disabled sporting enthusiasts to use shotguns. Principally, the commenters noted that forward pistol grips are an essential feature for this group of sporting enthusiasts.

Approximately 15,000 commenters addressed one or more of three points in opposing the 2011 report. First, the commenters focused on the impact upon an individual's Second Amendment rights. Second, the commenters questioned whether some shotguns could be more dangerous than others and argued that all shotguns are appropriate for home defense. Finally, many commenters questioned the validity of the sporting purposes test as required by the GCA.

ATF understands the concerns expressed in these comments, but notes that Federal law *requires* ATF to make sporting determinations of firearms before they may legally be approved for importation. This is because section 922(l) of the GCA prohibits the importation of *any* firearms or ammunition, and therefore a firearm may be imported only if it meets one of the exceptions found in the statute, 18 U.S.C. § 925. One of these exceptions, the sporting purposes test found in section 925(d)(3), currently provides the only avenue by which firearms or ammunition may legally be imported in any quantity for possession and use by private individuals.

Further, the constitutionality of section 925(d)(3) is in little doubt even after *District of Columbia v. Heller* and its progeny. In *Heller*, the Supreme Court noted that, although not unlimited, “[T]here seems to us no doubt, on the basis of both text and history, that the Second Amendment conferred an individual right to keep and bear arms.” Even without this qualifying language, concerns about the constitutionality of section 925(d)(3) or ATF application of this statute are without legal basis.

Specifically, section 925(d)(3) does not limit or pose an undue burden on possession of shotguns. As stated above, section 925(d)(3) actually permits the importation of firearms and has no impact upon the legal possession of more than 743,000 shotguns that were manufactured in the United States in 2010 alone. Section 925(d)(3) and the 2011 report impact only those shotguns that are to be imported and, in fact, prohibit only a small number of shotguns that Congress has determined should not be imported.

A number of the commenters expressed various concerns, including possible negative effects on self defense or the increased costs of firearms because of limitations on the importation of shotguns. However, it should be noted that the sporting purposes test under 18 U.S.C. § 925(d)(3) applies as a limitation only on the *importation* of shotguns. Accordingly, the 2011 report results in no “ban” on any shotguns, even those with nonsporting features. In fact, any domestically made shotguns with these features are unaffected by 18 U.S.C. 925(d)(3) or the report. Therefore, shotguns with these features remain available for self defense.

Second, the 2011 report has not resulted in the denial of any of the most popular shotguns that were previously approved for importation. For example, concerns that the Saiga shotgun would be prohibited from importation based upon the 2011 report are unfounded. As currently imported, the Saiga contains none of the nonsporting features discussed in the report.

Numerous commenters questioned the scope of sporting purposes, including ATF's long-held interpretation that this includes the traditional shooting sports of hunting, skeet and trap shooting and target shooting. Specifically, some argued that “three gun” competitions should be

considered to fall within the scope of sporting purposes. However, as discussed in the 2011 report, the legislative history indicates that this was not meant to include police and military style shooting competitions. Three gun competitions generally require competitors to use a rifle, a pistol and a shotgun to engage targets in timed events. Competitors and organizers emphasize tactical deployment of these firearms to properly engage the targets. These competitions are clearly based upon military or police training and therefore are the type of activity that Congress sought to exclude as “sporting.”

Further, statistics suggest that the United States Practical Shooting Association has approximately 19,000 members who participate in “three gun” or similar competitions. Conversely, the U.S. Fish and Wildlife Service estimates that in 2006, 10.7 million licensed individuals participated in hunting within the U.S. Using this data, those participating in tactical shooting comprised approximately .18% of those participating in hunting. For tactical shooting events to affect the type of shotgun that may be considered as “generally recognized as particularly suitable for or readily adaptable to sporting purposes,” ATF would have to consider use by .18% of the sporting public as determinative of what is “generally recognized” in the community. ATF does not believe such an approach is consistent with the congressional intent in enacting this provision.

Amendments

The 2011 report set forth 10 features that the agency determined are disqualifying under the sporting purposes test. These include the forward pistol grip and the integrated rail system, including rails on the side and underside of the firearm.

In discussing the forward pistol grip, the 2011 report noted that the feature allowed for “continued accuracy during sustained shooting over long periods of time.” The report concluded that this was not particularly advantageous for recognized sporting purposes based upon the fact that, in such activities, a few well-aimed shots are paramount. However, there is a convincing argument that this feature is generally recognized as particularly suitable for or readily adaptable to sporting purposes because it permits accuracy and maneuverability even for activities such as bird hunting or skeet shooting. The forward pistol grip permits a shooter to grip a shotgun at a more natural angle in that the shooter is not required to rotate the forward hand and cradle the firearm during firing. This ergonomic design provides for added comfort and more accurate engagement of fast-moving targets. Therefore, the 2011 report will be amended and this feature removed as a nonsporting feature.

Forward pistol grips are often attached to the underside of firearms through the use of an integrated rail system—another feature that the 2011 report addressed. As noted in the report, an integrated rail system, which includes rails on the side and bottom planes of the firearm, permits a shooter to add several features to include flashlights, lasers or other items that are not particularly suitable for or readily adaptable to sporting purposes. However, recognition of the forward pistol grip as sporting would have little effect if integrated rails systems remain a nonsporting feature. Therefore, because of the use of the forward pistol grip, it necessarily follows that the integrated rail system is generally recognized as particularly suitable for or readily adaptable to sporting purposes.

Based upon the above, the criteria in the 2011 report are hereby revised to read as follows:

- (1) Folding, telescoping, or collapsible stocks;
- (2) bayonet lugs;
- (3) flash suppressors;
- (4) magazines over 5 rounds, or a drum magazine;
- (5) grenade-launcher mounts;
- (6) light enhancing devices;
- (7) excessive weight (greater than 10 pounds for 12 gauge or smaller);
- (8) excessive bulk (greater than 3 inches in width and/or greater than 4 inches in depth).