

# Unusual Importations and Importations for the U.S. Government

Desiree M. Dickinson  
Industry Liaison/Analyst  
Firearms and Explosives Imports Branch

# Temporary Imports

- ATF recognizes that inspection, repair, calibration, incorporation into another defense article, and reconditioning of machineguns, destructive devices, and other NFA firearms is often necessary for National defense

# Temporary Imports

- The procedure for the temporary import for the previously listed purposes is as follows:
- Be qualified under the GCA and NFA to import the type of firearms sought for importation;
- Obtain a temporary import license, DSP-61, from State in accordance with 22 CFR 123.3 or;

# Temporary Imports

- Be qualified for a temporary import license exemption pursuant to 22 CFR 123.4;
- Within 15 days of the release from CBP custody, file an ATF Form 2, Notice of Firearms Manufactured or Imported, showing the importation of the firearms. The DSP-61 must be attached to the Form 2

# Temporary Imports

- If the import is subject to a licensing exemption under 22 CFR 123.4, the importer must submit with the Form 2 a statement, under penalties of perjury, attesting to the exemption and stating that the article will be exported within 4 years of its importation into the U.S.

# Temporary Imports

- Maintain the defense articles in a secure place and manner to ensure that the articles are not diverted to criminal or terrorist use; and
- Export the articles within 4 years of importation into the U.S.

# Temporary Imports

- ATF also recognizes that temporarily imported NFA weapons are sometimes “transferred” from the importer to a contractor within the U.S. for inspection, testing, calibration, repair or incorporation into another defense article.

# Temporary Imports

- The NFA does not distinguish between temporary and permanent imports.
- All transfers are subject to the transfer and registration requirements of the NFA, including the restrictions placed on machineguns by 18 USC 922(o).

# Temporary Imports

- All parties to NFA transfers must be properly licensed to engage in an NFA firearms business.
- An approved ATF Form 9 (Application and Permit for Permanent Exportation of Firearms) is required when exporting firearms that were originally imported on a temporary import license from the State Dept.

# Substantial Transformation

- The AECA recognizes the doctrine of “substantial transformation” in the case of firearms and ammunition manufactured in the United States which were furnished to a foreign government under a foreign assistance or sales program of the United States.

# Substantial Transformation

- Although such firearms are generally prohibited from importation into the United States, the AECA expressly exempts firearms that have been so “substantially transformed” as to become articles of foreign manufacture.

# Substantial Transformation

- This policy DOES NOT apply to firearms which incorporate components manufactured in countries which are subject to an arms embargo.
- For example, the ban on the importation of defense articles from China was imposed pursuant to 22 U.S.C. 2778, on May 28, 1994.

# Substantial Transformation

- The regulations implementing the import provisions of the AECA at 27 CFR Part 447 specify the *defense articles* which are subject to regulation under that statute. Section 447.21 states that the term “defense articles” includes nonautomatic and semiautomatic firearms to caliber .50 inclusive and all components and parts for such firearms.

# Substantial Transformation

- Any firearms sought for import that incorporate component parts manufactured in China or any other embargoed country are subject to the import restrictions.
- ATF declines to extend the substantial transformation doctrine beyond the categories Congress specifically designated for such treatment. Congress applied the substantial transformation concept only to those firearms furnished under certain programs.

# Substantial Transformation

- Extension of this doctrine beyond firearms furnished under a foreign assistance or sales program would result in circumvention of arms embargos imposed on countries in furtherance of the foreign policy of the United States.

# Exceptions to GCA Applicability

## U.S. Government

Section 925(a)(1) exempts the United States and all political subdivisions from almost all provisions of the GCA.

# Exceptions to GCA Applicability

## U.S. Government

- Under the AECA (27 CFR 447.53(a)(1) and Section 2778) , Importations BY the United States or any agency thereof are exempt from the provisions of the AECA.
- This does not extend to contractors importing FOR a government entity!

# Importation of Nonsporting Defense Articles for Testing

- Nonsporting defense articles (but not machineguns) may be imported for research and testing.
- They should be imported on their own Form 6 and block #10 should state they are coming in for testing/research. Defense articles being delivered directly to the government should be on a separate Form 6.

# Importation of Nonsporting Defense Articles for Testing

- If you are importing nonsporting defense articles for testing/research, the Form 6 must also contain justification for the quantity imported, an detailed explanation of the testing to be conducted and a statement concerning the final disposition of the articles.

# Importation of Non sporting Defense Articles for Testing

- For imports of non sporting ammo for testing, the Form 6 must be accompanied by supporting documentation that answer the following questions:
- The exact caliber or gauge of the ammunition to be imported for scientific or research purposes and the exact quantities to be used;

# Importation of Nonsporting Defense Articles for Testing

- A detailed explanation of the science or research to be conducted, for whom the testing or experimentation will be done, and what tests will be performed;
- The location/laboratory where the science or research will take place;
- How long it will take to complete the scientific or research purposes;

# Importation of Nonsporting Defense Articles for Testing

- What will be accomplished as a result of the science or research;
- The standards or protocols for the science or research;
- An explanation why non-sporting ammunition is required for scientific or research purposes; and

# Importation of Nonsporting Defense Articles for Testing

- A statement detailing how any ammunition not expended during the science or research will be disposed of.
- Importation of armor piercing ammunition for testing must first be approved by FTB, before you file a Form 6!

# Importation of Nonsporting Defense Articles for Testing

- The request must address the items detailed at 27 CFR 478.149 (name and address of who controls the policies of the applicant, nature or purpose of the testing, description of the AP ammo to be received, and identity of the manufacturer or importer from whom received.)

# Importation of Nonsporting Defense Articles for Testing

- The written FTB approval should be attached to the Form 6 application.

# Return of Defense Articles to the United States

- 18 U.S.C. 925(d)(4) allows for the importation of GCA firearms and ammunition that were previously taken out of the United States or a possession by the person who is bringing in the firearms or ammunition. This does not apply to NFA!

# Return of Defense Articles to the United States

- You must be able to prove to CBP that you took the firearms or ammunition out of the U.S. If you cannot, a Form 6 must be filed.
- NFA items may be returned to the U.S. provided the importation is in compliance with 27 CFR 479.111 and 18 U.S.C. 922(o). A Form 6 must be filed and documentation provided.

# Return of Defense Articles to the United States

- If the importation of the NFA items is not in accordance with 479.111 and/or 922(o), the NFA items may be imported into a CBW or FTZ until such time as importation into the U.S. can be effected.

# Retransfer Authorization

- No military defense article of United States manufacture may be imported into the United States if such article was furnished to a foreign government under a foreign assistance or foreign military sales program without written retransfer authorization from the State Department.

# Retransfer Authorization

- If the U.S. origin defense articles were transferred pursuant to a direct commercial sale, the retransfer request should come from DDTC.
- If the U.S. origin defense articles were transferred government to government, the retransfer request should come from RSAT.

# Consider These Questions Before You Import!

- Before you complete your Form 6 application, ask yourself the following questions:
- WHAT am I importing?
- WHERE is it being imported from and WHERE was it manufactured?
- WHO is the importer?

# Consider These Questions Before You Import!

- WHY is the defense article coming in?
- The most important question to ask yourself is WHAT is coming in. This will tell you what set of laws will govern the import (GCA, NFA, AECA, OCC or some combination).
- Then, as you answer the other questions, you will know if your defense article is importable.

# Consider These Questions Before You Import

- Always remember, just because the import may be exempt under one set of laws, it may not be exempt under another!