



HARMONIZED SYSTEM
COMMITTEE

-
28th Session
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NC0450E1
(+ Annexes I to III)
O. Eng.

Brussels, 28 September 2001.

DRAFT RECOMMENDATION OF THE CUSTOMS CO-OPERATION COUNCIL
ON THE INSERTION IN NATIONAL STATISTICAL NOMENCLATURES OF SUBHEADINGS
TO FACILITATE THE MONITORING AND CONTROL OF PRODUCTS SPECIFIED IN THE
DRAFT PROTOCOL CONCERNING FIREARMS COVERED BY THE UN CONVENTION
AGAINST TRANSNATIONAL ORGANIZED CRIME

(Item IV.1 on Agenda)

Reference documents :

NC0138E2 (HSC/24)	NC0270E1 (HSC/26)
NC0149E1 (HSC/24)	NC0339E1 (HSC/26)
NC0160E2, Annex D/2 (HSC/24 – Report)	NC0340E2, Annexes D and N (HSC/26 – Report)
NC0180E1 (HSC/24)	NC0363E1 (HSC/27)
NC0250E2, Annex D/2 (HSC/25 – Report)	NC0430E2, Annex D/2 (HSC/27 – Report)

I. BACKGROUND

1. At its 27th Session, the Committee continued its considerations vis-à-vis a possible draft Recommendation on the insertion in national statistical nomenclatures of subheadings to facilitate the monitoring and control of products specified in the draft Protocol concerning firearms covered by the UN Convention against transnational organized crime, as suggested by the Canadian Customs Administration. It was noted at that point that the United Nations had not yet formally approved the Firearms Protocol. All delegations that spoke were of the view that the Protocol should be signed first before a draft Recommendation should be prepared or presented to the Council.
2. During the discussions, the US Delegate informed the Committee about the note submitted by his administration, and suggested that the content of that note be incorporated into a new working document to be presented at the Committee's next session. This note is reproduced in Annex I to this document. To facilitate the discussions in the Committee, the Secretariat has numbered the paragraphs.
3. On 26 July 2001, the Secretariat also received a note from the Canadian Customs Administration, indicating that it had reviewed its initial proposal, had addressed certain

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concerns raised during the previous sessions of the Harmonized System Committee, and proposed a possible compromise. This note is reproduced in Annex II to this document. To facilitate the discussions in the Committee, the Secretariat has numbered the paragraphs.

II. SECRETARIAT COMMENTS

4. The Secretariat has been informed that the Firearms Protocol was adopted by the United Nations General Assembly on 31 May 2001. Consequently, a draft Council Recommendation could be prepared and presented to the Council at its June 2002 Sessions.
5. Hereafter, the Secretariat sets out, subheading by subheading, its comments with respect to the US and Canadian notes, if any.

Preamble

6. Given the fact that for certain subheadings the level of (necessary) detail goes beyond nine subdivisions, the Secretariat agrees with the US Administration that the clause in the Preamble referring to group together two or more of the listed commodities should be retained, if the Committee adopts all of the proposed subdivisions (i.e., subheadings 9305.10, 9305.29 and 9305.91). Although the revised Canadian proposal does not go beyond nine subdivisions, the proposals for subheadings 9301.90 and 9305.91 may still create a problem for those countries using a coding system similar to the HS at the national level. Consequently, the clause referred to above may still be needed for the Canadian proposal as well.

Subheading 9301.90

7. The United States suggests not to differentiate between “light”, “medium” and “heavy” machine-guns in subheading 9301.90, given the fact that there is no commonly accepted definition of the various types. The Canadian Administration, while agreeing with the US view that there is no common definition, suggests differentiating on the basis of calibre size (i.e., those firing a cartridge of less than 50 calibre (12.7 mm) and those firing a cartridge of 50 calibre (12.7 mm) or greater). The Secretariat agrees with the United States and Canada to delete the references to “light”, “medium” and “heavy” machine-guns, given the fact that there is no common definition for these categories. However, it has some doubts with respect to the purpose of the Canadian proposal to differentiate machine guns on the basis of calibre. It has, therefore, placed the subdivisions at issue in square brackets, pending the outcome of the discussions.
8. The Canadian Administration considers that a separate entry for “bolt action rifles” is warranted, whereas the US Administration considers that a nomenclature separately identifying automatic, semi-automatic and other rifles, would be sufficient (it is understood that the terms “automatic” (US proposal) and “fully automatic” (Canadian proposal) are synonyms). The Secretariat has, therefore, placed the separate entry for bolt action rifles in square brackets.

Subheading 9302.00

9. In the Canadian proposal, the first entry at four dash level for single barrel pistols, reads “Semi-automatic” in English and “Entièrement automatiques” in French. The Secretariat, while assuming that the English is the correct reference, has replaced the wording in the French version by “Semi-automatiques” conform the draft texts with Annex II to Doc. NC0363B1. However, the Canadian delegation is invited to clarify this point.

10. The United States has put a footnote against this HS code number, indicating that it does not include automatic weapons. This note is based on the HS Explanatory Note to heading 93.02, which indicates that continuous fire weapons are excluded and directed (as sub-machine-guns) to heading 93.01 (penultimate paragraph on page 1692). The Secretariat considers that this kind of note is not appropriate in a Recommendation and has, therefore, left it out of the draft text. However, it leaves it to the Committee to decide whether or not the proposed footnote should be included.

Subheading 9303.20

11. The United States and Canada propose the deletion of a number of subdivisions at the four dash level. The United States left out the separate identification of “break-action” shotguns, whereas the Canadian Administration suggests including it. The Secretariat has placed this reference in square brackets, pending the outcome of the discussions. Having said this, the Secretariat has noticed that the French version of the Canadian proposal for the first four dash subdivision reads “à culasse”. Since the English version refers to “pump-action”, the Secretariat assumes that it should read “à coulisse”. It has, therefore, inserted the latter expression in the draft text. Nonetheless, the Canadian Administration may wish to clarify this point.
12. See paragraph 10 above with respect to the footnote proposed by the US.

Subheading 9303.30

13. Both administrations suggest reducing the number of subdivisions. Canada, however, has suggested including a reference to “manual repeater” type weapons of this subheading, which are described in a footnote. The Secretariat has some concern, however, with respect to the scope of this subdivision, since this expression may also include “single-shot” weapons, referred to in the first subdivision (for example, single-shot bolt action). The Canadian Administration may wish to clarify this point. Pending the outcome of the discussions, the Secretariat has placed the subdivision referring to “manual repeater” and the footnote in square brackets.
14. See paragraph 10 above with respect to the footnote proposed by the US.

Subheadings 9305.10 and 9305.29

15. The Canadian Administration has addressed the concern about the maximum number of subdivisions, within one HS subheading, whereas the United States proposes fourteen subdivisions (including “other”) (in this respect see also paragraph 6 above). The Secretariat wonders whether it would be possible for the US Administration to indicate which of the subdivisions could be combined (i) to facilitate the introduction of the subdivisions at national level for those countries using a coding system for their national subdivisions comparable to that of the HS, and (ii) to avoid diversities between countries which may introduce at the national level different combinations of subdivisions. The Canadian Administration is also invited to clarify which subdivisions could be combined, since the total number of subdivisions (without an “other”) is nine. The Secretariat leaves it to the Committee to decide whether a high volume of detail, as suggested by the United States (and to a certain extent also by Canada), should be inserted in the draft Recommendation.
16. Concerning the US proposal to insert subdivisions for “magazine parts and components” and “silencer parts and components”, the Secretariat questions what is meant by the term “components”, since the heading and subheading texts concerned do not refer to that term. The United States may wish to clarify this point. Pending the outcome of this discussion, the Secretariat has placed this term in square brackets.

17. With respect to the suggested subdivision “other” in the US proposal, the Secretariat would like to recall that at the 26th Session, the Committee agreed not to insert such a separate subdivision, since it might cover commodities not falling within the scope of the Firearms Protocol.

Subheading 9305.91

18. The Secretariat would like to point out first that there is no need to use the expression “of heading 93.01” (as in the US proposal), since this reference is already included in the text of HS subheading 9305.91. It has, therefore, placed this part of the text in square brackets.
19. Second, a colon should be added at the end of the first line of the US proposal, and the subdivisions following the first one should have four instead of three dashes. The latter observation also applies to the French version of the Canadian proposal. The draft texts in Annex III to this document have been modified accordingly.
20. Third, the third four dash subdivision in the French version of the Canadian proposal refers to “canons rayés” (rifle barrels), whereas the English version refers to “barrels” without qualification. Given the scope of the subdivision at three dash level, the Secretariat suggest aligning the French text on the English by deleting the term “rayés”.
21. With respect to the number of proposed subdivisions, the Secretariat would like to refer to paragraphs 6 and 12 above.

Subheadings 9705.00 and 9706.00

22. The United States and Canada agree with the alternative texts suggested by the Secretariat in paragraph 12 of Doc. NC0363E1.
23. Finally, it should be understood that paragraph 7 of the US note indicating that a draft Recommendation should not be presented to the Council this year (emphasis added), refers to the year 2001, since it was written for the May 2001 session of the Committee.
24. The Secretariat has prepared a draft Recommendation taking into account the revised proposal received from the Canadian Administration and the US note presented to the Committee at its 27th Session. The draft text is set out in Annex III to this document.

III. CONCLUSION

25. The Committee is invited to consider the Canadian and US proposals with a view to preparing a draft Council Recommendation as set out in Annex III to this document, to be presented to the Council in June 2002, taking into account the Secretariat’s comments in paragraphs 4 to 24 above.

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US Note

INTRODUCTION

1. The United States has reviewed the draft text for the recommendation as found in Annex N to Doc. NC0340B2 (HSC/26 - Report) and Annex II in Doc. NC0363B1 and submits for consideration by the Harmonized System Committee at its 27th Session the revised draft text set forth below.
2. The United States believes that the goals of the Protocol will be better served if the creation of new subdivisions of the statistical nomenclature is limited to the types of articles likely to be used in criminal activity. The proliferation of unnecessary subdivisions increases administrative burdens and increases the likelihood of reporting errors.
3. In this draft text, some subdivisions have been combined or eliminated. In the heading for parts, however, we suggest additional detail where certain types of articles are particularly associated with criminal activity.
4. As with the draft text in Doc. NC0363B1, the draft text set forth below includes subdivisions within headings 97.05 and 97.06 for firearms. We agree and have used the Secretariat's alternative language. These subdivisions would not provide detailed information on firearm types but would alert Customs official to the importation of firearms. We suggest that the Secretariat consult with the United Nations as to whether the definition of "antique" might be aligned with the definition used in the Harmonized System.
5. This draft text includes the maximum detail that the United States believes should be in a WCO recommendation. The bracketed clause in the Preamble should be retained for countries that, for various reasons, cannot include detail in their nomenclature. Comments are provided below in order to provide explanation for the US proposed provisions.

TERMINOLOGY

6. According to firearm experts in the United States, the terms "fully automatic pistols" and "submachine guns" are nearly synonymous. Also, in common usage, "semiautomatic firearms" are often called "automatic".

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7. The United States agrees with the Secretariat that because the Firearms Protocol has not been formally approved by the United Nations the draft Recommendation should not be presented to the Council this year.

ALTERNATIVE TEXT

Subheading 9301.90

- - - Rifles :
 - - - - Automatic
 - - - - Semiautomatic
 - - - - Other
- - - Automatic shotguns
- - - Other automatic weapons :
 - - - - Automatic pistols, submachine guns
 - - - - Light machine guns
 - - - - Medium machine guns
 - - - - Heavy machine guns
 - - - - Other

COMMENT 1 : The United States believes that the major interest of law enforcement officials regarding the firearms classified within this subheading will be in automatic and semiautomatic weapons. Therefore, other types of rifles can be grouped together in an “other” provision.

COMMENT 2 : There is not a commonly accepted definition of “light,” “medium,” and “heavy” machine-guns. Therefore, consideration should be given to deleting these terms from the recommendation.

Subheading 9302.00**

- - - Revolvers
- - - Pistols, single barrel :
 - - - - Semiautomatic
 - - - - Other
- - - Pistols, multiple barrel

COMMENT 1 : The United States believes that the major interest of law enforcement officials regarding the firearms classified within this subheading will be in automatic and semiautomatic firearms. Therefore, single shot pistols can be included within an “other” provision without the loss of important information. The United States believes that the provisions set forth above will serve the needs of law enforcement officials in monitoring such firearms.

COMMENT 2 : Multiple-barrel pistols are uncommon and semiautomatic multiple barrel pistols may not exist in trade.

Subheading 9303.10 [None]

COMMENT : Muzzle loading firearms are obsolescent and exist in trade primarily as replicas of antiques.

Subheading 9303.20

- - - Shotguns, single barrel** :
 - - - - Pump action
 - - - - Semiautomatic
 - - - - Other
- - - Shotguns, multiple barrel, including combination guns

COMMENT : The United States believes that semiautomatic and pump action shotguns pose the most serious threat in criminal activity. Therefore, the United States believes that the provisions set forth above will serve the needs of law enforcement officials in monitoring such firearms.

Subheading 9303.30**

- - - Single shot
- - - Semiautomatic
- - - Other

COMMENT : The United States believes that the major interest of law enforcement officials regarding the firearms classified within this subheading will be in semiautomatic rifles. Therefore, the United States believes that the provisions set forth above will serve the needs of law enforcement officials in monitoring such firearms.

Subheading 9305.10

- - - Frames and receivers
- - - Firing mechanisms***
- - - Barrels
- - - Barrel extensions and sights (front & back sights)
- - - Pistons, locking lugs and gas buffers
- - - Magazines with a capacity of 10 rounds or less
- - - Magazines with a capacity of more than 10 rounds
- - - Magazine parts and components
- - - Silencers (sound moderators)
- - - Silencer parts and components
- - - Butts, grips and plates
- - - Slides (for pistols)
- - - Cylinders (for revolvers)
- - - Other

COMMENT 1 : As a result of the importance of their use in firearms, the United States believes that frames and receivers should be monitored in international trade. Accordingly, the United States requests that they be provided for together in a separate 3-dash provision.

COMMENT 2 : Magazines with a capacity of 10 rounds or less are more commonly used in sporting firearms. Therefore, in the interest of monitoring the trade of magazines commonly used in such sporting firearms and those not commonly used in such sporting firearms, the United States believes that it would be useful to have (1) a separate provision for magazines with a capacity of 10 rounds or less and (2) a separate provision for magazines with a capacity of over 10 rounds.

COMMENT 3 : As a result of their potential use in criminal activity, the United States believes that silencers should be monitored in international trade. Accordingly, the United States requests that they be provided for together in a separate 3-dash provision.

COMMENT 4 : The design and manufacturing quality of parts such as butts, grips and plates are not critical to the functioning of firearms, and thus they do not have to be monitored by a separate provision in the recommendation.

Subheading 9305.29

- - - Frames and receivers
- - - Firing mechanisms***
- - - Barrels
- - - Barrel extensions and sights (front & back sights)
- - - Pistons, locking lugs and gas buffers
- - - Magazines with a capacity of 10 rounds or less
- - - Magazines with a capacity of more than 10 rounds
- - - Magazine parts and components
- - - Breeches, bolts (gunlocks) and bolt carriers
- - - Slings and tripods/bipods
- - - Silencers (sound moderators)
- - - Silencer parts and components
- - - Flash eliminators
- - - Other

COMMENT 1 : See comments 1 to 3 for subheading 9305.10.

COMMENT 2 : Slings, tripods/bipods and flash eliminators could be included in an “other” provision.

Subheading 9305.91

- - - Of rifles, machine guns, submachine guns or shotguns of heading 93.01
- - - Frames and receivers
- - - Firing mechanisms***
- - - Barrels
- - - Barrel extensions and sights (front & back sights)
- - - Pistons, locking lugs and gas buffers
- - - Magazines with a capacity of 10 rounds or less
- - - Magazines with a capacity of more than 10 rounds
- - - Magazine parts and components
- - - Breeches, bolts (gunlocks) and bolt carriers
- - - Slings and tripods/bipods
- - - Silencers (sound moderators)
- - - Silencer parts and components
- - - Flash eliminators
- - - Other

COMMENT : See comments 1 to 3 for subheading 9305.10.

Subheading 9705.00

- - - Machine-guns, sub-machine-guns, shotguns, rifles, revolvers and pistols; parts of the foregoing :
- - - - Manufactured on or before 31 December 1899
- - - - Manufactured after 31 December 1899

Subheading 9706.00

- - - Machine-guns, sub-machine-guns, shotguns, rifles, revolvers and pistols; parts of the foregoing :
- - - - Manufactured on or before 31 December 1899
- - - - Manufactured after 31 December 1899

**Does not include automatic weapons.

*** The term "firing mechanisms" includes such parts as levers, tumblers, triggers, percussion hammers, locks, cocking pieces, ejectors, firing pins, safety catches (safety and selector mechanisms), sears, extractors.

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Canadian Note

1. In light of the Secretariat's comments in Doc. NC0363E1 and the US Administration's Note to the 27th Session, the Canadian Administration has reviewed its proposed set of statistical nomenclatures that forms the basis of this Recommendation.
2. Firstly, the Canadian Administration confirms that it concurs with the Secretariat's proposal for the alignment of the English and French texts to the three-dash subdivision for subheading 9301.90 (Doc. NC0363E1). With respect to the statistical nomenclatures for subheadings 9705.00 and 9706.00, the Canadian Administration also confirms its acceptance of the Secretariat's alternative proposal (Doc. NC0363E1).
3. During the course of the 27th Session, the Secretariat and some delegates correctly raised the concern that it was premature to finalize the Recommendation and submit it for the Council approve prior to the passage of the Firearms Protocol by the United Nations. The Canadian Administration is pleased to inform the Secretariat that the Firearms Protocol was approved by the General Assembly of the United Nations on May 31, 2001. Further, there were no amendments that would have a bearing on the Recommendation.
4. The Canadian Administration has reviewed with interest the alternative statistical nomenclature structure that was proposed by the US Administration in their Note to the 27th Session. Since the initial submission of the proposed statistical nomenclature structure (Spring 1999), there have been a number of developments with respect to the monitoring of the international trade and movement of firearms. As a result, the Canadian Administration concurs with a number of the US Administration's proposed changes.
5. After consultations with officials of the Royal Canadian Mounted Police Firearms Laboratory, the Canadian Administration would like to propose a revised statistical nomenclature structure that is contained in the Annex to this note.
6. In the case of subheading 9301.90, changes were made to the four-dash subdivisions under rifles and machines-guns. In the case of rifles, the first three four-dash subdivisions were deleted and replaced with "- - - Bolt action". It is felt that there is still sufficient trade in military style bolt-action rifles to warrant a specific breakout.
7. The Canadian Administration concurs with its US counterpart that there is no commonly accepted definition of "light", "medium" or "heavy" machine-guns. However there was still a need to differentiate between machine-gun sizes. Such an approach could be made on the size of the cartridge fire by the machine-gun. Accordingly, the four-dash subdivisions under machine-guns were replaced with :
 - - - - Designed to fire a cartridge of less than 50 calibre (12.7 mm)
 - - - - Designed to fire a cartridge of 50 calibre (12.7 mm) or greater
8. With respect to subheading 9302.00, the Canadian Administration supported the US Administration's rationale to delete the first four-dash subdivision under "pistols, single barrel" and all the four-dash subdivisions under "pistols, multiple barrel".
9. The Canadian Administration agrees with the US Administration's premise that no statistical nomenclatures are required under subheading 9303.10.

10. In the case of subheading 9303.20, a number of four-dash subdivisions can be eliminated. The nomenclature structure would be revised as follows:

- - - Shotguns, single barrel :
 - - - - Pump-action
 - - - - Break-action
 - - - - Semi-automatic
 - - - - Other
- - - Shotguns, multiple barrel including combination guns

11. With respect to subheading 9303.30, a number of the three-dash subdivisions can be either eliminated or combined into a single subdivision. Since there still remains a very large trade in pump-action, lever-action and bolt-action rifles, these types of weapons should be afforded special consideration. In this regard the Canadian Administration proposes that they be captured in a three-dash subdivision entitled “manual repeater”. The “manual repeater” is defined as :

“For the purposes of subheading 9303.30, the term “manual repeater” refers to any type of manually operated firing mechanism including pump-action, lever-action and bolt-action.”

12. Regarding the statistical nomenclatures for subheadings 9305.10, 9305.29 and 9305.91, the Canadian Administration took note of the Secretariat’s comments in Doc. NC0149E1 that some countries use a system at the national level comparable to the Harmonized System, which does not allow for more than 9 subdivisions within one (sub-) category. To address this concern, the Canadian Administration regrouped some of the items in the statistical nomenclatures to insure that no single (sub-) category exceeded 9 subdivisions. These regroupings were reflected in Doc. NC0180E1 and other subsequent documents on this issue.

13. With the respect to in the US Administration’s Note to the 27th Session, there are 14 three-dash subdivisions each for subheadings 9305.10, 9305.29 and 9305.91. This exceeds the recommended 9-subdivision limit for all three subheadings. Accordingly, the Canadian Administration is of the opinion that current statistical nomenclature structure be retained with only minor amendments. Recognizing the special importance placed on “frames and receivers” by several administrations, a separate subdivision was added to these subheadings. In the case of the subdivisions entitled “magazines” and “silencers (sound moderators), flash eliminators” a reference to “parts thereof” was added. Despite these amendments, the recommended 9-subdivision limit was respected.

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Subheading 9301.90

- - - Rifles** :
 - - - - Bolt action
 - - - - Semi-automatic
 - - - - Fully automatic
 - - - - Other

- - - Machine-guns :
 - - - - Designed to fire a cartridge of less than 50 calibre (12.7 mm)
 - - - - Designed to fire a cartridge of 50 calibre (12.7 mm) or greater

- - - Sub-machine-guns :
 - - - - Fully automatic pistols
 - - - - Other

- - - Fully automatic shotguns

Subheading 9302.00

- - - Revolvers

- - - Pistols, single barrel :
 - - - - Semi-automatic
 - - - - Other

- - - Pistols, multiple barrel

Subheading 9303.20

- - - Shotguns, single barrel :
 - - - - Pump-action
 - - - - Break-action
 - - - - Semi-automatic
 - - - - Other

- - - Shotguns, multiple barrel including combination guns

Subheading 9303.30

- - - Single-shot
- - - Manual repeater***
- - - Semi-automatic
- - - Other

Subheading 9305.10

- - - Firing mechanisms****
- - - Frames and receivers
- - - Barrels, barrel extensions and sights (front and back sights)
- - - Pistons, locking lugs and gas buffers
- - - Magazines and parts thereof
- - - Silencers (sound moderators) and parts thereof
- - - Butts, grips and plates
- - - Slides (for pistols)
- - - Cylinders (for revolvers)

Subheading 9305.29

- - - Firing mechanisms****
- - - Frames and receivers
- - - Rifle barrels, barrel extensions, sights (front and back sights) and stocks
- - - Pistons, locking lugs and gas buffers
- - - Magazines and parts thereof
- - - Silencers (sound moderators), flash eliminators and parts thereof
- - - Breeches, bolts (gunlocks) and bolt carriers
- - - Slings and tripods/bipods

Subheading 9305.91

- - - Of machine-guns, sub-machine-guns, shotguns or rifles :
 - - - - Firing mechanisms****
 - - - - Frames and receivers
 - - - - Barrels, barrel extensions, sights (front and back sights) and stocks
 - - - - Pistons, locking lugs and gas buffers
 - - - - Magazines and parts thereof
 - - - - Silencers (sound moderators), flash eliminators and parts thereof
 - - - - Breeches, bolts (gunlocks) and bolt carriers
 - - - - Slings and tripods/bipods
 - - - - Other

Subheading 9705.00

- - - Machine-guns, sub-machine-guns, shotguns, rifles, revolvers and pistols; parts of the foregoing :
 - - - - Manufactured on or before 31 December 1899
 - - - - Manufactured after 31 December 1899

Subheading 9706.00

- - - Machine-guns, sub-machine-guns, shotguns, rifles, revolvers and pistols; parts of the foregoing :
 - - - - Manufactured on or before 31 December 1899
 - - - - Manufactured after 31 December 1899

* The Customs Co-operation Council is the official name of the World Customs Organization

** Within the context of heading 93.01, the term “rifle” includes assault rifles (rifles capable of selective fire), service rifles and sniper rifles.

*** For the purposes of subheading 9303.30, the term “manual repeater” refers to any type of manually operated firing mechanism including pump-action, lever-action and bolt-action.

**** For the purposes of heading 93.05, the term “firing mechanisms” includes such parts as levers, tumblers, triggers, percussion hammers, locks, cocking pieces, ejectors, firing-pins, safety catches (safety and selector mechanisms), sears, extractors.

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