U.S. Customs and Border Protection

General Notices

AGENCY INFORMATION COLLECTION ACTIVITIES:

Guam Visa Waiver Agreement

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0126

ACTION: Proposed collection; comments requested.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Guam Visa Waiver Agreement (Form I–760). This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 7910) on February 20, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 3, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to Department of Homeland Security/Customs and Border Protection, and sent via electronic mail to oira_submission@omb.eop.gov or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION:

U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Title: Guam Visa Waiver Agreement

OMB Number: 1651–0126

Form Number: I–760

Abstract: This Agreement is intended to ensure that every alien transported to Guam or the Commonwealth of the Northern Mariana Islands (CNMI) meets all of the stipulated eligibility criteria prior to departure to Guam or the CNMI. It also outlines the requirements to be satisfied by the carrier.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Estimated Number of Respondents: 10

Estimated Time Per Respondent: 12 minutes

Estimated Total Annual Burden Hours: 2

If additional information is required contact: Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings,

799 9th Street, NW, 7th Floor, Washington, DC. 20229–1177, at 202–325–0265.

TRACEY DENNING,
Agency Clearance Officer,
Customs and Border Protection.

[Published in the Federal Register, May 4, 2009 (74 FR 20490)]

ACCREDITATION AND APPROVAL OF AMSPEC SERVICES LLC, AS A COMMERCIAL GAUGER AND LABORATORY

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of accreditation and approval of Amspec Services LLC, as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.12 and 19 CFR 151.13, Amspec Services LLC, 1300 North Delaware St., Paulsboro, NJ 08066, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquires regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The accreditation and approval of Amspec Services LLC, as commercial gauger and laboratory became effective on February 19, 2009. The next triennial inspection date will be scheduled for February 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 17, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, May 4, 2009 (74 FR 20491)]

APPROVAL OF CAMIN CARGO CONTROL, INC., AS A COMMERCIAL GAUGER

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of approval of Camin Cargo Control, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 151.13, Camin Cargo Control, Inc., 977 Hostos Avenue, Ponce, PR 00716, has been approved to gauge petroleum, petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.13. Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquires regarding the specific gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to cbp.labhq@dhs.gov. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://cbp.gov/xp/cgov/import/operations_support/labs_scientific_svcs/commercial_gaugers/

DATES: The approval of Camin Cargo Control, Inc., as commercial gauger became effective on February 05, 2009. The next triennial inspection date will be scheduled for February 2012.

FOR FURTHER INFORMATION CONTACT: Anthony Malana, Laboratories and Scientific Services, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, Suite 1500N, Washington, DC 20229, 202–344–1060.

Dated: April 17, 2009

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services.

[Published in the Federal Register, May 4, 2009 (74 FR 20491)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, May 6, 2009

The following documents of U.S. Customs and Border Protection ("CBP"), Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and CBP field offices to merit publication in the CUSTOMS BULLETIN.

SANDRA L. BELL,
Executive Director,
Regulations and Rulings,
Office of International Trade.

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE ADMISSIBILTY OF CERTAIN KNIVES WITH SPRING-ASSISTED OPENING MECHANISMS

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of four ruling letters and revocation of treatment relating to the admissibility of certain knives with spring-assisted opening mechanisms.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. §1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182,107 Stat. 2057), this notice advises interested parties that U.S. Customs and Border Protection (CBP) intends to revoke four ruling letters relating to the admissibility, pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 (and the CBP Regulations promulgated pursuant thereto set forth in 19 CFR §§ 12.95–12.103) of certain knives with spring-assisted opening mechanisms. Similarly, CBP proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before June 21, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations

and Rulings, Attention: Intellectual Property and Restricted Merchandise Branch, Mint Annex, 799 9th Street, N.W., Washington, D.C. 20229. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street, N.W., Washington, D.C., during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark, Trade and Commercial Regulations Branch, at (202) 325–0089.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, Intellectual Property and Restricted Merchandise Branch, at (202) 325–0089.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerged from the law are **informed compliance** and **shared responsibility**. These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930 (19 U.S.C. §1484), as amended, the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke four ruling letters concerning to the admissibility of certain knives with spring-assisted opening mechanisms. Although in this notice CBP is specifically referring to the revocation of Headquarters Ruling Letters (HQ) 116315, dated March 1, 2005 (Attachment A); HQ W116730, dated November 7, 2006 (Attachment B); HQ H016666, dated December 12, 2007 (Attachment C) and HQ H032255, dated August 12, 2008 (Attachment D), this notice covers any rulings on the admissibility of such merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to those identi-

fied. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the admissibility of merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved with substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 116315, HQ W116730, HQ H016666, and HQ H032255, CBP determined that certain knives with spring- or release-assisted opening mechanisms were admissible pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and the CBP Regulations promulgated pursuant thereto and set forth in 19 CFR §§ 12.95–12.103. Based on our recent review and reconsideration of HQ 116315, HQ W116730, HQ H016666, and HQ H032255, and reexamination of several of the knives therein at issue, we have determined that the admissibility determination in the aforementioned rulings is incorrect. It is now CBP's position that knives incorporating spring- and release-assisted opening mechanisms are prohibited from entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP intends to revoke HQ 116315, HQ W116730, HQ H016666, and HQ H032255, and any other ruling not specifically identified that is contrary to the determination set forth in this notice to reflect the proper admissibility determination pursuant to the analysis set forth in proposed Headquarters Ruling Letters (HQs) H043122 (Attachment E), H043124 (Attachment F) H043126 (Attachment G) and H043127 (Attachment H) . Additionally, pursuant to 19 U.S.C. §1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions that are contrary to the determination set forth in this notice. Before taking this action, consideration will be given to any written comments timely received.

DATED: May 1, 2009

JEREMY BASKIN,
Director,
Border Security & Trade Compliance Division

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,

HQ 116315
March 1, 2005
RES–2–23 RR:IT:EC 116315 GOB
CATEGORY: Restricted Merchandise

THOMAS M. KEATING, ESQ.
HODES, KEATING & PILON
39 South LaSalle Street Suite 1020
Chicago, IL 60603–1731

RE: HQ 116229 Modified; Knives; Switchblade Knives; 15 U.S.C. §§ 1241–1245; 19 CFR §§ 12.95–12.97

DEAR MR. KEATING:

This letter is in reply to your letter of September 17, 2004 on behalf of Fiskars Brands, Inc. ("Fiskars"), requesting reconsideration of HQ 116229, dated July 8, 2004. You made an additional submission of December 14, 2004 and participated in a telephone conference on October 29, 2004. We have reviewed HQ 116229 and have determined that it should be modified.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of HQ 116229, as described below, was published in the Customs Bulletin on January 26, 2005. No comments were received in response to the notice. One request for reconsideration of another ruling was received. That request will be considered separately from the subject notice.

FACTS:

You request reconsideration of HQ 116229, wherein we determined that the knives at issue were switchblades and therefore prohibited entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245).

You describe the knives as follows:

> The subject merchandise are release assisted knives designed to be primarily used as a "general carry." The knife's features, such as the belt clip and serrated edge, are characteristic of a jackknife or pocket knife, rather than a weapon. There are two versions of the knives at issue. Part number 22–0761 [07161] is a serrated blade version (previously attached as Sample A) and part number 22–07162 is a fine edged version (previously attached as Sample B) [Footnote omitted.]
>
> . . . part number 22–07161 (Exhibit A) is a folding blade knife made in Taiwan. The knife is made of metal and includes a pocket clip on the side of the handle. The knife has the visual appearance of a jackknife or pocketknife. The knife measures 4 ¼ inches long when closed. When extended, the blade of the knife measures 3 inches total. The blade has a serrated section measuring 1 ¼ inches. The overall length of the knife, when extended, is 7 ¼ inches. There is a 3/16 inch thumb stud on each

side of the unsharpened edge near the base of the blade used for pulling the blade open. The blade has a single edge and can be locked into an open position by the use of a safety device. The same safety device is used to lock the knife in the closed position. This device does not act to open or close the knife – its sole function is to keep the knife locked in the knife's then-existing position. The knife also has a lock mechanism that must be released to close the knife once the knife is open. This mechanism is not engaged in any way to open the knife. Release assisted knife, part number 22–07162 (Exhibit B), is identical in description to part number 22–07161 (Exhibit A), except that it has a fine edge, not a serrated blade.

ISSUE:

Whether the subject knives are prohibited entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245.

LAW AND ANALYSIS:

Statutory and Regulatory Background

Pursuant to the Act of August 12, 1958 (Pub. L. 85–623, codified at 15 U.S.C. §§ 1241–1245, otherwise known as the "Switchblade Knife Act"), whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined or imprisoned, or both.

The Customs and Border Protection ("CBP") Regulations promulgated pursuant to the Switchblade Knife Act are set forth in 19 CFR §§ 12.95–12.103. In this regard we note the following definitions:

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows:

(a) *Switchblade knife*. . . . any imported knife, . . . including "Balisong", "butterfly" . . . knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof.

. . .

(c) *Utilitarian use.* "Utilitarian use" includes but is not necessarily limited to use:

(1) For a customary household purpose;

(2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

Other pertinent regulations are as follows:

§ 12.96 Imports unrestricted under the Act.

(a) *Common and special purpose knives.* Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1). . . .

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. 1595a(c).

HQ 116229

In HQ 116229, dated July 8, 2004, this office ruled that the subject knives were switchblades within the meaning of 19 CFR 12.95(a)(4) and were therefore prohibited entry into the U.S. pursuant to the Switchblade Knife Act. HQ 116229 did not address whether the knives were switchblades within the meaning of 19 CFR 12.95(a)(1) or whether they had a utilitarian use pursuant to 19 CFR 12.95(c).

Your Claims

In your submission of December 14, 2004, you made the following claims:

(1) The subject knives are not switchblade knives within the meaning of 19 CFR 12.95(a)(1).

(2) In HQ 114990 CBP found that knives similar to the subject knives had blades designed for utilitarian uses within the meaning of 19 CFR 12.95(c).

(3) Marketing and promotional materials with respect to the subject knives are not yet available as Fiskars has not begun commercially importing the knives. You submitted various marketing materials with respect to other Fiskars' products, some of which are similar to the subject knives. Such similar knives, which are within the same class of lightweight folding knives as the subject knives, are the "E-Z-Out," "Gator" and "L.S.T." knives. Promotional materials for the Gator knives provide that they are "used by a wide assortment of people including fishing and hunting enthusiasts, electricians and repairmen and many more." Materials for the E-Z-Out knives provide: "A hard working electrician, repairman, policeman or home repair person seldom has both hands free to retrieve a knife. With the E-Z-Out

they need only one hand to reach down, grab the knife, open it, use it and put it away." Materials for the L.S.T. knives refer to them as "the perfect pocket knives." They are "light enough to be carried everywhere, strong enough for everyday activities, and tough enough to do anything."

You therefore contend that the subject knives should be admitted to unrestricted entry pursuant to 19 CFR 12.96(a).

Our Analysis and Determination

As indicated above, in HQ 116229 this office found that the subject knives are switchblades within the meaning of 19 CFR 12.95(a)(4). Upon further review, however, we have now determined that the subject knives are not switchblades within the meaning of 19 CFR 12.95(a)(1) because they do not meet the criteria therein, *i.e.*, they do not open automatically by hand pressure applied to a button or device in the handle, nor do they open automatically by operation of inertia, gravity, or both. We find additionally that the subject knives have a blade style designed for a primary utilitarian use within the meaning of 19 CFR 12.95(c).

Accordingly, we conclude that the requirements of 19 CFR 12.96(a) are satisfied, *i.e.*, the subject knives have a blade style designed for a primary utilitarian use as defined in 19 CFR 12.95(c) and they are not switchblades within the meaning of 19 CFR 12.95(a)(1). Therefore, pursuant to 19 CFR 12.96(a), the subject knives (part nos. 22–07161 and 22–07162) are permitted unrestricted entry into the United States.

HOLDING:

The subject knives (part nos. 22–07161 and 22–07162) are permitted unrestricted entry into the United States pursuant to 19 CFR 12.96(a).

EFFECT ON OTHER RULINGS:

HQ 116229 is modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

CHARLES D. RESSIN
Acting Director,
International Trade Compliance Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W116730
November 7, 2006
RES–2–23 RR:BSTC:CCI W116730 GOB
CATEGORY: Restricted Merchandise

MATTHEW K. NAKACHI, ESQ.
SANDLER, TRAVIS & ROSENBERG AND GLAD & FERGUSON, P.C.
One Sutter Street 10th Floor
San Francisco, CA 94104

RE: Knives; Switchblade Knives; 15 U.S.C. §§ 1241–1245; 19 CFR §§ 12.95–12.97

DEAR MR. NAKACHI:

This letter is in reply to your letter of May 31, 2006 on behalf of Columbia

River Knife and Tool ("CRKT"), requesting a ruling with respect to the admissibility of certain knives described below. Your ruling request was transferred to this branch for response on October 11, 2006. Our ruling is set forth below.

FACTS:

You describe the knives as follows:

> The Outburst mechanism operates via a *slight* spring action, which assists in the opening of the knife by application of the finger or thumb pressure on a thumb stud or disc which protrudes from the side of the blade, allowing the blade to be more easily pushed to an open and locked position. The interior of the blade is engineered such that the spring actually provides resistance, which prevents the knife from opening, until the blade is opened to approximately a 30-degree angle.
>
> Hence, when incorporated into knives, the Outburst mechanism only *assists* in the opening of the knife when the blade is opened to approximately 30-degrees. The user is unable to modify this restriction since at angles less than 30-degrees, the spring exerts back-pressure which holds the blade closed. . . . This back-pressure arises from the engineering of the tempered blade shape and not from the mere tightening of a blade screw.
>
> Since the Outburst mechanism holds the blade closed, it renders the tightness of the blade screw **irrelevant** for purposes of review under the Switchblade Knife Act. . . . As a secondary level of protection, *even if the main spring of the Outburst mechanism is removed*, the locking arm of the knife itself contains a ball-detent bias against the blade which prevents the knife from being flicked open by inertia or gravity. The ball-detent bias is also not readily accessible to modification by the user.
>
> The knife models subject to this ruling are as follows:
>
> 1. The *Koji Hara Ichi* consists of a drop-point, pen-knife blade, in black or silver. The body of the knife is built on an open frame with Zytel scale inserts and fasteners and a removable clip. . . .
> 2. The *My Tighe* consists of a stainless-steel, utilitarian blade with optional serrations. The knife includes black Zytel inserts, black hardware and a black Teflon-plated, removable clip. . . .
> 3. The *Kommer Full Throttle* consists of a stainless-steel, straight blade with optional serrations. The knife is built on an open frame with a flat handle profile. . . .
>
> All of the blades are readily identifiable as being designed for personal, utilitarian use. . . .
>
> . . .
>
> . . . Such single-handed opening is greatly beneficial to craftsmen, outdoorsmen and workers, who are engaged in a particular task when the need to simultaneously make a cut arises. For example, a fisherman could be holding a fish caught on a fishing line with one hand, while both drawing and opening an Outburst assisted-opening knife with the other hand.
>
> [All emphasis in original.]

You have submitted samples of the following knives, as identified on their packages: 1080 Full Throttle; 1081 Full Throttle; 1070 Ichi; 1070KSC Ichi; 1070R Red Ichi Asist.; 1090 My Tighe; 1091 My Tighe; and 1091K My Tighe Black. It is these eight knives which are the subject of this ruling. In the closed position, these knives range in length from four and one-half inches to three and one-quarter inches. The blades range in length from three and one-half inches to two and three-eighths inches.

ISSUE:

Whether the subject knives are prohibited entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245.

LAW AND ANALYSIS:

Pursuant to the Act of August 12, 1958 (Pub. L. 85–623, codified at 15 U.S.C. §§ 1241–1245, otherwise known as the "Switchblade Knife Act"), whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined or imprisoned, or both.

The Customs and Border Protection ("CBP") Regulations promulgated pursuant to the Switchblade Knife Act are set forth in 19 CFR §§ 12.95–12.103. In this regard we note the following definitions:

§ 12.95 Definitions.

Terms as used in §§12.96 through 12.103 of this part are defined as follows:

(a) *Switchblade knife.* . . . any imported knife, . . . including "Balisong", "butterfly" . . . knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof.

(c) *Utilitarian use.* "Utilitarian use" includes but is not necessarily limited to use:

(1) For a customary household purpose;

(2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

Other pertinent regulations are as follows:

§ 12.96 Imports unrestricted under the Act.

(a) *Common and special purpose knives.* Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1). . . .

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. 1595a(c).

In HQ 116315, dated March 1, 2005, we stated as follows:

> . . . we have now determined that the subject knives are not switchblades within the meaning of 19 CFR 12.95(a)(1) because they do not meet the criteria therein, *i.e.*, they do not open automatically by hand pressure applied to a button or device in the handle, nor do they open automatically by operation of inertia, gravity, or both. We find additionally that the subject knives have a blade style designed for a primary utilitarian use within the meaning of 19 CFR 12.95(c).
>
> Accordingly, we conclude that the requirements of 19 CFR 12.96(a) are satisfied, *i.e.*, the subject knives have a blade style designed for a primary utilitarian use as defined in 19 CFR 12.95(c) and they are not switchblades within the meaning of 19 CFR 12.95(a)(1). Therefore, pursuant to 19 CFR 12.96(a), the subject knives (part nos. 22–07161 and 22–07162) are permitted unrestricted entry into the United States.

We have carefully examined the eight knives which you have submitted. These knives are substantially similar in operation to the knives in HQ 116315. We find that the subject knives are not switchblade knives within the meaning of 19 CFR § 12.96(a)(1) in that the blades do not open automatically by hand pressure applied to a button or device in the handle of the knife (there is no opening device on the handle), nor do the knives open automatically by operation of inertia or gravity. We further find that the knives have a blade style designed for a primary utilitarian use within the meaning of 19 CFR § 12.95(c).

Based upon these findings, we conclude that the requirements of 19 CFR 12.96(a) are satisfied, *i.e.*, the subject knives have a blade style designed for a primary utilitarian use as defined in 19 CFR 12.95(c) and they are not switchblades within the meaning of 19 CFR 12.95(a)(1). Therefore, pursuant to 19 CFR 12.96(a), the subject knives (1080 Full Throttle; 1081 Full Throttle; 1070 Ichi; 1070KSC Ichi; 1070R Red Ichi Asist.; 1090 My Tighe;

1091 My Tighe; and 1091K My Tighe Black) are permitted unrestricted entry into the United States.

HOLDING:

The subject knives are permitted unrestricted entry into the United States pursuant to 19 CFR 12.96(a).

GLEN E. VEREB
Chief,
Cargo Security, Carriers, and Immigration Branch.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H016666
December 12, 2007
ENF–4–02–OT:RR:BSTC:IPR H016666 AML
CATEGORY: Restricted Merchandise

MS. LARA A. AUSTRINS
MR. THOMAS J. O'DONNELL
RODRIGUEZ, O'DONNELL ROSS
8430 W. Bryn Mawr Ave., Suite 525
Chicago, Illinois 60631

RE: Request for Ruling Regarding the Admissibility of Knives

DEAR MS. AUSTRINS AND MR. O'DONNELL:

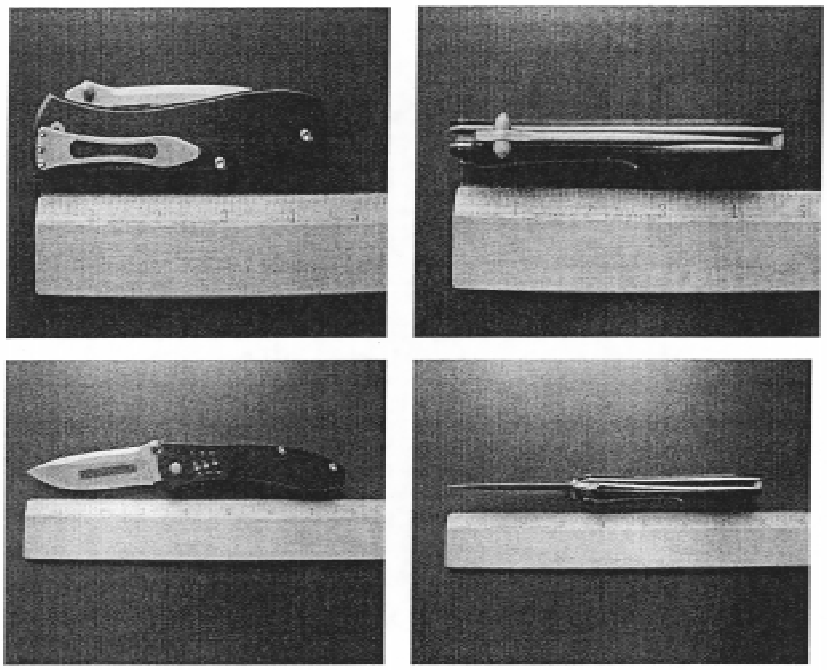
This is in reply to your letters dated July 17, and August 2, 2007, to the National Commodity Specialist Division, New York, in which you requested a ruling regarding the admissibility of certain knives described below. As you are aware, your ruling request was transferred to this branch for response. A sample was provided for our consideration.

FACTS:

You describe the knife at issue, marketed as the "Tailwind" (model number HD0071), as a single edged, release assisted, folding knife. The knife has a "false edge grind" on the topside of the 3 ½ inch blade and measures 4 ½ inches when closed. When extended, the overall length of the knife is 7¾ inches. The knife weighs 4.2 ounces.

The Tailwind name is derived from the patented opening mechanism. The opening mechanism, subject of U.S. Patent number 7,051,441, is equipped "with an assist spring, which assists in the opening of the knife only after the knife has been manually opened to approximately thirty degrees." The blade must be opened manually until the blade reaches approximately thirty degrees at which point the mechanism engages and the blade springs open to its extended and locked. The knife is refolded by depressing a manual release.

Images of the Tailwind:



ISSUE:

Whether the subject knives are prohibited from entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and the Customs and Border Protection ("CBP") Regulations promulgated pursuant to the Switchblade Knife Act set forth in 19 CFR §§ 12.95–12.103.

LAW AND ANALYSIS:

Headquarters Ruling Letters (HQ) W116730, dated November 7, 2006 and 116315, dated March 1, 2005 (copies enclosed), address CBP's position on the admissibility of knives with spring assisted mechanisms substantially similar to the ones under consideration. In HQ W116730, we determined that the "Outburst" knife "with a mechanism [that] only assists in the opening of the knife when the blade is opened to approximately 30-degrees" was admissible under the Switchblade Knife Act. Similarly, in HQ 116315, we determined that a "Release assisted knife, part number 22–07162" are permitted unrestricted entry into the United States pursuant to 19 CFR 12.96(a).

Accordingly, we incorporate the LAW AND ANALYSIS section of the aforementioned rulings in this decision, as they are dispositive of the issue you have raised.

HOLDING:

The subject knife (the "Tailwind" (model number HD0071)) has a blade style designed for a primary utilitarian use as defined in 19 CFR 12.95(c) and it is not a switchblade within the meaning of 19 CFR 12.95(a)(1). Therefore, pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and 19

CFR 12.96(a), the subject knives are permitted unrestricted entry into the United States.

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights Branch Enclosures

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H032255
August 12, 2008
ENF–4–02–OT:RR:BSTC:IPR H032255 AML
CATEGORY: Restricted Merchandise

MR. MATTHRE K. NAKACHI
SANDLER, TRAVIS & ROSENBERG, P.A.
1300 Pennsylvania Avenue Suite 400
Washington, DC 20004

RE: Request for Ruling Regarding the Admissibility of Knives

DEAR MR. NAKACHI:

This is in reply to your letter dated July 1, 2008, in which you requested a ruling regarding the admissibility of a knife, set forth in images and described below, pursuant to the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.* A sample was provided for our consideration.

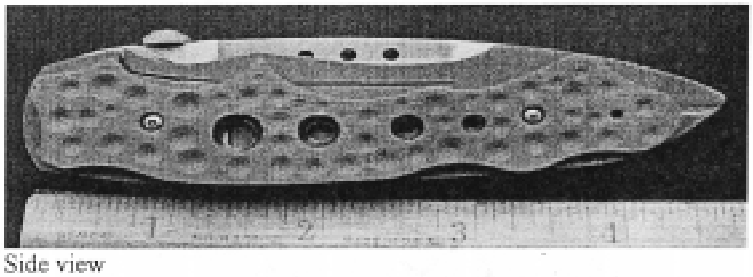
FACTS:

You describe the knife at issue, tentatively planned by your client to be called the "VanHoy Assist," as a knife "of new design." The prototype is of standard knife construction with a single-edged, utilitarian blade. You state that "the unique nature of the knife is that the assisted-opening mechanism operates by thumb or hand pressure downward on the blade/thumbscrew (rather than the traditional upward pressure)." You further indicate that "the downward pressure releases the locking mechanism and then a slight spring action assists the opening of the blade to the fully locked position." The knife has a 3 inch blade and measures approximately 4 5⁄8 inches when closed. When extended, the overall length of the knife is approximately 7 5⁄8 inches. The knife is refolded by depressing a manual release.

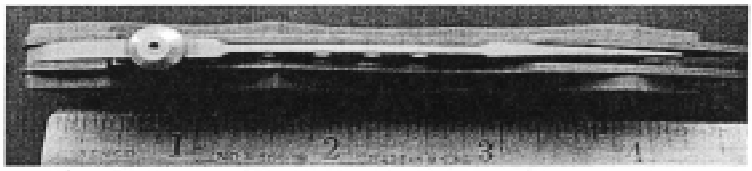
You contend that there are prior rulings which determined that knives with similar spring-assisted opening mechanisms are admissible pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and the implementing Customs and Border Protection ("CBP") Regulations set forth at 19 CFR §§ 12.95–12.103. You cite New York Ruling Letter ("NY") I86378, dated October 1, 2002, in which CBP determined that a knife that was opened by pressing a thumb knob on the surface of the blade was admissible under the Switchblade Knife Act. Similarly, you cite Headquarters Ruling Letter ("HQ") 116315, dated March 1, 2005, which modified HQ 116229, dated July 8, 2004, and held that release assisted knives were admissible pursuant to the Switchblade Knife Act.

You contend that the VanHoy Assist is similar to the knife in HQ 116229 in that the assisted-opening mechanism holds the blade within the knife body and does not have a button in the handle to "trigger the blade to open." Thus you contend that the knife should not be considered to be a switchblade knife under the relevant statute and regulations.

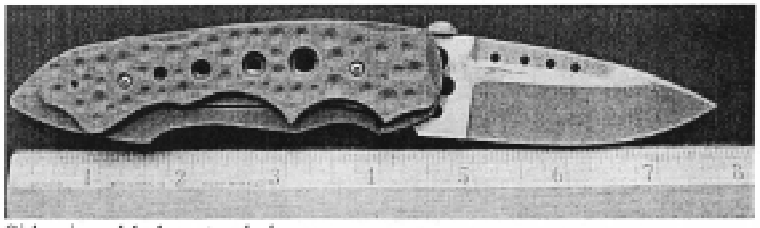
Images of the VanHoy Assist:



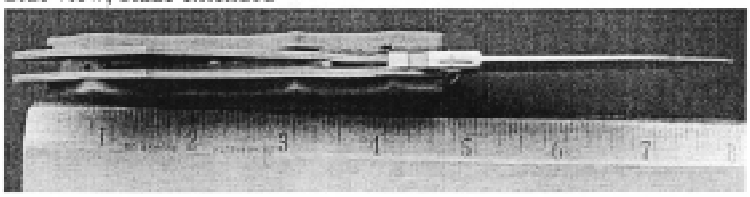
Side view



Top view



Side view, blade extended



Top view, blade extended

ISSUE:

Whether the subject knives are prohibited from entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and CBP Regulations promulgated pursuant thereto set forth in 19 CFR §§ 12.95–12.103.

LAW AND ANALYSIS:

Pursuant to the Act of August 12, 1958 (Pub. L. 85–623, codified at 15 U.S.C. §§ 1241–1245, otherwise known as the "Switchblade Knife Act"), whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined or imprisoned, or both.

The Customs and Border Protection ("CBP") Regulations promulgated pursuant to the Switchblade Knife Act are set forth in 19 CFR §§ 12.95–12.103. In this regard we note the following definitions:

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows:

(a) *Switchblade knife.* . . . any imported knife, . . . including "Balisong", "butterfly" . . . knives, which ha[ve] one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof.

(c) *Utilitarian use.* "Utilitarian use" includes but is not necessarily limited to use:

(1) For a customary household purpose;

(2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

Other pertinent regulations are as follows:

§ 12.96 Imports unrestricted under the Act.

(a) *Common and special purpose knives.* Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1). . . .

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. § 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. § 1595a(c).

Headquarters Ruling Letters (HQ) W116730, dated November 7, 2006 and HQ 116315, dated March 1, 2005, address CBP's position on the admissibility of knives with spring-assisted mechanisms substantially similar to those under consideration. In HQ W116730, we determined that the "Outburst" knife "with a mechanism [that] only assists in the opening of the knife when the blade is opened to approximately 30-degrees" was admissible under the Switchblade Knife Act. Similarly, in HQ 116315, we determined that a "Release assisted knife, part number 22–07162" is permitted unrestricted entry into the United States pursuant to 19 CFR Part 12.96(a).

We examined the sample knife considered in HQ 116315 and compared it to the VanHoy Assist. Although the VanHoy Assist has a button on the blade (rather than "thumb studs" on the knife in HQ 116315) which must be depressed in order to unlock and open the knife, the spring assist mechanisms are the same.

In turning to the VanHoy Assist, application of the regulatory criteria set forth above reveals that the subject knives are not switchblades within the meaning of 19 CFR Part 12.95(a)(1) because they do not meet the criteria enumerated therein, *i.e.*, they neither open automatically by hand pressure applied to a button or device in the handle, nor do they open automatically by operation of inertia, gravity, or both. We find additionally that the subject knives have a blade style designed for a primary utilitarian use within the meaning of 19 CFR Part 12.95(c).

Accordingly, we conclude that the requirements of 19 CFR 12.96(a) are satisfied, *i.e.*, the subject knives have a blade style designed for a primary utilitarian use as defined in 19 CFR Part 12.95(c) and the knives are not switchblades within the meaning of 19 CFR Part 12.95(a)(1). Therefore, pursuant to 19 CFR 12.96(a), the subject knives are permitted unrestricted entry into the United States.

HOLDING:

The subject knife (the "VanHoy Assist") has a blade style designed for a primary utilitarian use as defined in 19 CFR 12.95(c) and it is not a switchblade within the meaning of 19 CFR 12.95(a)(1). Therefore, pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and 19 CFR 12.96(a), the subject knives are permitted unrestricted entry into the United States.

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights Branch.

[ATTACHMENT E]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H043122
April 30, 2009
ENF–4–02–OT:RR:BSTC:IPR H043122 AML
CATEGORY: Restricted Merchandise

THOMAS M. KEATING, ESQ.
HODES, KEATING & PILON
134 North LaSalle Street
Suite 1300
Chicago, Illinois 60602

RE: Revocation of HQ 116315; Admissibility of Knives; Switchblade Knife Act, 15 U.S.C. §§ 1241–1245; 19 CFR Parts 12.95–12.103

DEAR MR. KEATING:

This is in reference to Headquarters Ruling Letter ("HQ") 116315, dated March 5, 2005, and issued to you on behalf of Fiskars Brands, Inc., which concerned the admissibility of the "release-assisted" knives described below, pursuant to the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.* In the referenced ruling, the U.S. Customs Service (hereinafter "CBP")[1] determined that the knives at issue were admissible into the United States pursuant to the Switchblade Knife Act. We have reconsidered the rationale of, and the admissibility determination made in HQ 116315 and found both to be in error. For the reasons set forth below, we hereby revoke HQ 116315.

FACTS:

CBP paraphrased your description of the knives at issue in HQ 116315 as follows:

> The subject merchandise are release assisted knives designed to be primarily used as a "general carry." The knife's features, such as the belt clip and serrated edge, are characteristic of a jackknife or pocket knife, rather than a weapon. There are two versions of the knives at issue. Part number 22–0761 [07161] is a serrated blade version (previously attached as Sample A) and part number 22–07162 is a fine edged version (previously attached as Sample B) [Footnote omitted.]
>
> . . . part number 22–07161 (Exhibit A) is a folding blade knife made in Taiwan.
>
> The knife is made of metal and includes a pocket clip on the side of the handle.
>
> The knife has the visual appearance of a jackknife or pocketknife. The knife measures 4¼ inches long when closed. When extended, the blade of the knife measures 3 inches total. The blade has a serrated section measuring 1¼ inches. The overall length of the knife, when extended, is

[1] Effective March 1, 2003, the United States Customs Service was renamed the United States Bureau of Customs and Border Protection. See Homeland Security Act of 2002, Pub. L. No. 107–296 § 1502, 2002 U.S.C.C.A.N. (116 Stat.) 2135, 2308; Reorganization Plan Modification for the Department of Homeland Security, H.R. Doc. No. 08–32, at 4 (2003).

> 7¼ inches. There is a 3⁄16 inch thumb stud on each side of the unsharpened edge near the base of the blade used for pulling the blade open. The blade has a single edge and can be locked into an open position by the use of a safety device. The same safety device is used to lock the knife in the closed position. This device does not act to open or close the knife – its sole function is to keep the knife locked in the knife's then-existing position. The knife also has a lock mechanism that must be released to close the knife once the knife is open. This mechanism is not engaged in any way to open the knife. Release assisted knife, part number 22–07162 (Exhibit B), is identical in description to part number 22–07161 (Exhibit A), except that it has a fine edge, not a serrated blade.

The sample from HQ 116315 bears the word "Gerber" on its blade. A search of that word, in combination with the part numbers recited in the "Facts" section above, produced results (see *http://www.gerberknivesdirect.com/ product/07162*; last visited on January 13, 2009) that describe the opening mechanism as follows: "The FAST Draw relies on our proprietary new blade opening concept—Forward Action Spring Technology—that's so lightning-quick, so pleasingly easy to open with just one hand, it's already drawing a lot of attention among knife folks everywhere . . . Should you choose, you can open the FAST Draw in the traditional way, using the thumb stud. Or, if speed is the order of the day, you can simply trigger the blade's sudden release with your index finger."

ISSUE:

Whether the subject knives are prohibited from entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and the CBP Regulations promulgated pursuant thereto set forth in 19 CFR §§ 12.95–12.103.

LAW AND ANALYSIS:

Pursuant to the Act of August 12, 1958 (Pub. L. 85–623, codified at 15 U.S.C. §§ 1241–1245, otherwise known as the "Switchblade Knife Act"), whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined or imprisoned, or both.

> The Switchblade Knife Act defines "interstate commerce" at 15 U.S.C. § 1241(a):
>
> The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.
>
> The Switchblade Knife Act defines "switchblade knife" at 15 U.S.C. § 1241(b):
>
> The term "switchblade knife" means any knife having a blade which opens automatically—
>
> (1) by hand pressure applied to a button or other device in the handle of the knife, or
>
> (2) by operation of inertia, gravity, or both[.]

The CBP Regulations promulgated pursuant to the Switchblade Knife Act are set forth in 19 CFR §§ 12.95–12.103. We note the following definitions:

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows:

(a) Switchblade knife. "Switchblade knife" means any imported knife, or components thereof, or any class of imported knife, including "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof[.]

(b) Insignificant preliminary preparation. "Insignificant preliminary preparation" means preparation with the use of ordinarily available tools, instruments, devices, and materials by one having no special manual training or skill for the purpose of modifying blade heels, relieving binding parts, altering spring restraints, or making similar minor alterations which can be accomplished in a relatively short period of time.

Other pertinent regulations are as follows:

§ 12.96 Imports unrestricted under the Act.

(a) Common and special purpose knives. Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry *provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1)* [italicized emphasis added] . . .

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. § 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. § 1595a(c).

The plain language of the Switchblade Knife Act and relevant CBP regulations prohibit, *inter alia*, the importation of knives which are for use as weapons while explicitly permitting the importation of "common and special purpose" knives (see 19 CFR 12.95(c) "Utilitarian Use" and 12.96(a) ("Unrestricted Imports")). Several courts have addressed the breadth of the prohibition set forth in the statute. See, *e.g.*, *Precise Imports Corp. v. Kelly*, 378

F.2d 1014, 1017 (2d Cir. 1967), *cert. denied*, 389 U.S. 973, 19 L. Ed. 2d 465, 88 S. Ct. 472 (1967), in which the Court of Appeals for the Second Circuit stated that:

> The report of the Senate Committee on Interstate and Foreign Commerce which recommended passage of the Switchblade Knife Act stated that the enforcement of state laws banning switchblade knives would be extremely difficult as long as such knives could be freely obtained in interstate commerce, and added:
>
> "In supporting enactment of this measure, however, your committee considers that the purpose to be achieved goes beyond merely aiding States in local law enforcement. The switchblade knife is, by design and use, almost exclusively the weapon of the thug and the delinquent. Such knives are not particularly adapted to the requirements of the hunter or fisherman, and sportsmen generally do not employ them. It was testified that, practically speaking, there is no legitimate use for the switchblade to which a conventional sheath or jackknife is not better suited. This being the case, your committee believes that it is in the national interest that these articles be banned from interstate commerce." S.Rep. No. 1980, 85th Cong., 2d Sess., reprinted in 2 U.S. Code Cong. & Ad. News 1958, at 3435–37.
>
> The congressional purpose of aiding the enforcement of state laws against switchblade knives and of barring them from interstate commerce could be easily frustrated if knives which can be quickly and easily made into switchblade knives, and one of whose primary uses is as weapons, could be freely shipped in interstate commerce and converted into switchblade knives upon arrival at the state of destination. We decline to construe the act as permitting such facile evasion.
>
> . . . We hold, therefore, that a knife may be found to be a switchblade knife within the meaning of the Switchblade Knife Act if it is found that it can be made to open automatically by hand pressure, inertia, or gravity after insignificant alterations, and that one of its primary purposes is for use as a weapon.

In *Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988) the court, in describing a Balisong knife, stated that:

> [T]he district court described a Balisong knife as "basically a folding knife with a split handle." It went on to set out its prime use: while the exotic knife has some utilitarian use, it is most often associated with the martial arts and with combat . . . [and is] potentially dangerous, lethal. . . ." Citing another district court decision involving the same issue, *Precise Imports Corp. v. Kelly*, 378 F.2d 1014 (2d Cir.), *cert. denied*, 389 U.S. 973, 19 L. Ed. 2d 465, 88 S. Ct. 472 (1967) (upholding a seizure of certain knives with no legitimate purpose), the district court described it as of "minimal value" and distinguished another "seminal case interpreting the Act", *United States v. 1,044 Balisong Knives*, No. 70–110 (D. Ore. Sept. 28, 1970) (refusing to support seizure). The district court concluded that "congress intended to prohibit knives that opened automatically, ready for instant use . . . [and] was not concerned with whether the knife's blade would merely be exposed by gravity", . . . [it] intended 'open' to mean 'ready for use.' " *Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988).

See also *Taylor v. McManus*, 661 F. Supp. 11, 14–15 (E.D. Tenn. 1986), in which the Court of Appeals for the Eastern District of Tennessee observed:

> In examining the congressional record, it seems obvious that congress intended to prohibit knives which opened automatically, ready for instant use. Rep. Kelly, for example, described the switchblade "as a weapon (which) springs out at the slightest touch and is ready for instant violence." *Switchblade Knives: Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce*, House of Rep., 85th Cong., 2d Sess. 13, 29 (1958). She also noted that the prohibited gravity knife opens and "anchors in place automatically. Every bit as fast as the switchblade, it has proved to be as effective a killer." *Id.* at 29. Similarly, Rep. Delaney described the prohibited gravity knives as "knives (which) open and lock automatically at a quick flick of the wrist." 104 CONG. REC., 85th Cong., 2nd Sess. 12398 (June 26, 1958). (Emphasis supplied). Apparently, then, Congress was not concerned with whether the knife's blade would merely be exposed by gravity. Instead, they intended "open" to mean "ready for use", as exhibited in Rep. Kelley's testimony that the switchblade opened "ready for instant violence" and her and Rep. Delaney's comments that the gravity knife opened and locked automatically. While the Court does not intend to read into the Statute a requirement that the blades "lock" automatically, it does seem apparent that Congress intended "open" to mean "ready for use". Obviously a knife that has not locked into an open position is not ready for use. Since the Balisong knives cannot be used until the second handle is manually folded back and clasped, the Court finds that they do not open automatically by force of gravity or inertia.[2]

Based primarily on 15 U.S.C. § 1241(b)(1) (see also the first clause of 19 CFR Part 12.95(a)(1)) which defines a switchblade knife as being a knife having a blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, as well as reliance upon the exception set forth at 19 CFR Part 12.95(c) regarding knives with a blade style designed for a primary utilitarian use, CBP decided in several rulings, including HQ 116315, that knives with spring-assisted opening mechanisms are not switchblades as contemplated by the Switchblade Knife Act and implementing regulations.

Notwithstanding, because of the intrinsic health and public safety concerns underlying the statute and regulations, it is necessary to reassess our position regarding knives with spring-assisted opening mechanisms as 1) there are no judicial decisions interpreting, other than in the context of balisong knives, 15 U.S.C. § 1241(b)(2) and the second clause of 19 CFR Part 12.95(a) (discussed below) and 2) CBP has issued inconsistent rulings,

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[2] The conclusion regarding Balisong knives was reversed by *Taylor v. United States*, 848 F.2d 715, 1988 U.S. App. LEXIS 7761 (6th Cir. Tenn. 1988): "There is sufficient indication in the legislative history that the intent was to exclude these martial arts weapons, which even the district court admitted "can be opened very rapidly, perhaps in less than 5 seconds . . . [and] are potentially dangerous, lethal weapons." *Id.* at 720. Further, Balisongs were added to the list of prohibited knives when the regulations were amended in 1990. See the discussion of the regulatory amendments in HQ H030606, dated August 12, 2008, page 4.

of which HQ 116315 is one, regarding the issue of whether knives with spring-assisted opening mechanisms are admissible or prohibited from importation into the United States.

In *Alaska Trojan P'ship v. Gutierrez*, 425 F.3d 620, 628 (9th Cir. Alaska 2005), the Court of Appeals for the 9th Circuit stated, with regard to the interpretation of agency regulations that:

> "In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *McCarthy v. Bronson*, 500 U.S. 136, 139, 114 L. Ed. 2d 194, 111 S. Ct. 1737 (1991) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 100 L. Ed. 2d 313, 108 S. Ct. 1811 (1988)) (alteration in original). When a statute or regulation defines a term, that definition controls, and the court need not look to the dictionary or common usage. *Compare F.D.I.C. v. Meyer*, 510 U.S. 471, 476, 127 L. Ed. 2d 308, 114 S. Ct. 996 (1994) ("In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning."). An agency's interpretation of a regulation must "conform with the wording and purpose of the regulation." *Public Citizen Inc. v. Mineta*, 343 F.3d 1159, 1166 (9th Cir. 2003).

Because of the existence of conflicting rulings (*i.e.*, rulings which have determined that knives with spring-assisted opening mechanisms are switchblades as defined in the statute and others which have made the opposite conclusion), we have reexamined the definition of the word "switchblade knife" set forth at 15 U.S.C. § 1241(b) and 19 CFR Part 12.95(a)(1) and have determined that the definition set forth therein captures and proscribes, in addition to "traditional" switchblades, the importation of knives with spring-assisted opening mechanisms, often equipped with thumb studs or protrusions affixed to the base of the blade (rather than in the handle of the knives as set forth in the first clause of 19 CFR Part 12.95(a)(1)). The relevant regulatory language identifies and defines "switchblade knives" by exemplars (" "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives") and by definition ("or any class of imported knife . . . which has one or more of the following characteristics or identities: (1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, *or any knife with a blade which opens automatically by operation of inertia, gravity or both*[.]")

In reconsidering what types of knives are contemplated by the statute, we interpret the controlling terms according to their common meanings[3]. The term "automatically" is defined at *http://www.merriam-webster.com/dictionary/automatically* as:

> 1 a: largely or wholly involuntary ; especially : reflex 5 <automatic blinking of the eyelids> b: acting or done spontaneously or unconsciously c: done or produced as if by machine : mechanical <the answers

---

[3] A fundamental canon of statutory construction requires that "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42, 62 L. Ed. 2d 199, 100 S. Ct. 311 (1979); see also 2A Norman J. Singer, *Sutherland Statutory Construction* § 46:01 (6th ed. 2000). *United States v. Lehman*, 225 F.3d 426, 429 (4th Cir. S.C. 2000).

> were automatic> 2: having a self-acting or self-regulating mechanism <an automatic transmission> 3 of a firearm : firing repeatedly until the trigger is released.
>
> The term "inertia" is defined at *http://www.merriam-webster.com/dictionary/inertia* as:
>
> 1 a: a property of matter by which it remains at rest or in uniform motion in the same straight line unless acted upon by some external force b: an analogous property of other physical quantities (as electricity).
>
> See also, *http://physics.about.com/od/glossary/g/inertia.htm:* Definition: Inertia is the name for the tendency of an object in motion to remain in motion, or an object at rest to remain at rest, unless acted upon by a force. This concept was quantified in Newton's First Law of Motion; and *http://dictionary.reference.com/browse/ inertia*: 2. Physics. a. the property of matter by which it retains its state of rest or its velocity along a straight line so long as it is not acted upon by an external force.

In *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. Tenn. 1988), the United States Court of Appeals for the Sixth Circuit, in analyzing the terms of the statute and regulations at issue stated that:

> "Automatically" as used in the statute does not necessarily mean simply by operation of some inanimate connected force such as the spring in a literal switchblade. For example, the type of gravity or "flick" knife which is indisputably within the statute requires some human manipulation in order to create or unleash the force of "gravity" or "inertia" which makes the opening "automatic."

Knives equipped with spring- and release-assisted opening mechanisms are knives which "require[ ] some human manipulation in order to create or unleash the force of "gravity" or "inertia" which makes the opening "automatic." " See *Taylor, supra*. The fact that they differ in design (most if not all are equipped with thumb studs affixed to the base of the blunt side of the blade) from a traditional switchblade (in which the button that activates the spring mechanism is located in the handle of the knife), the spring-assisted mechanisms cause, via inertia, the blades of such knives to open fully for instant use, potentially as a weapon. Such knives are prohibited by the Switchblade Knife Act.

Our interpretation of 15 U.S.C. § 1241(b) and 19 CFR 12.95(a)(1) is supported by case law. In *Demko v. United States*, 44 Fed. Cl. 83, 88–89 (Fed. Cl. 1999), the Court of Federal Claims, in analyzing a regulation regarding the grandfathered sale of "street sweeper" shotguns, recited the following interpretations of the word "or" as used in statutes and regulations:

> "Generally the term 'or' functions grammatically as a coordinating conjunction and joins two separate parts of a sentence." *Ruben v. Secretary of DHHS*, 22 Cl. Ct. 264, 266 (1991) (noting that "or" is generally ascribed disjunctive intent unless contrary to legislative intent). As a disjunctive, the word "or" connects two parts of a sentence, "but disconnect[s] their meaning, the meaning in the second member excluding that in the first." *Id*. (quoting G. Curme, A Grammar of the English Language, Syntax 166 (1986)); see *Quindlen v. Prudential Ins. Co.*, 482 F.2d 876, 878 (5th Cir. 1973) (noting disjunctive results in alternatives, which must be treated separately). Nonetheless, courts have not ad-

> hered strictly to such rules of statutory construction. See *Ruben*, 22 Cl. Ct. at 266. For instance, "it is settled that 'or' may be read to mean 'and' when the context so indicates." *Willis v. United States*, 719 F.2d 608, 612 (2d Cir. 1983); see *Ruben*, 22 Cl. Ct. at 266 (quoting same); see also *DeSylva v. Ballentine*, 351 U.S. 570, 573, 100 L. Ed. 1415, 76 S. Ct. 974 (1956) ("We start with the proposition that the word 'or' is often used as a careless substitute for the word 'and'; that is, it is often used in phrases where 'and' would express the thought with greater clarity."); *Union Ins. Co. v. United States*, 73 U.S. 759, 764, 18 L. Ed. 879 (1867) ("But when we look beyond the mere words to the obvious intent we cannot help seeing the word 'or' must be taken conjunctively. . . . This construction impairs no rights of the parties . . . and carries into effect the true intention of Congress. . . .").

In analyzing the language of 15 U.S.C. § 1241(b) and the relevant regulation, we conclude that the word "or" is used conjunctively yet distinguishes the paradigm switchblade knife (paraphrased: spring action blade released by depression of a button in the handle) from other knives which function similarly to the paradigm switchblade but do not have the "traditional" configuration or function. Given its legislative and judicial history, the Switchblade Knife Act is intended to proscribe the importation of any knife that opens automatically by hand pressure applied to a button or device in the handle of the knife *and* any knife with a blade which opens automatically by operation of inertia, gravity or both.

The knives at issue open via inertia – once pressure is applied to the thumb stud (or protrusion at the base of the blade), the blade continues in inertial motion (caused by the combined effect of manual and spring-assisted pressure) until it is stopped by the locking mechanism of the knife. Such knives open instantly for potential use as a weapon. We therefore conclude, in consideration of the authorities and sources Switchblade Knife Act and implementing regulations, that the knives with spring-and release- assisted opening mechanisms, that such knives are described and prohibited by 15 U.S.C. § 1241(b)(2) and 19 CFR Part 12.95(a)(1).

We also have reconsidered our interpretation of the term "utilitarian use", as we have in several rulings found knives with spring-assisted opening mechanisms to be admissible because they were equipped with blades for utilitarian use. The regulation defines, albeit by exemplar, the types of knives (subject to the condition precedent set forth in 19 CFR 12.96: Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry *provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1)* [italicized emphasis added] . . .) that are considered to be "utilitarian" for purposes of the statute. See 19 CFR 12.95(c):

> (c) Utilitarian use. "Utilitarian use" includes but is not necessarily limited to use:
>
> (1) For a customary household purpose;
>
> (2) For usual personal convenience, including grooming;
>
> (3) In the practice of a profession, trade, or commercial or employment activity;
>
> (4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

As we stated in HQ H030606, dated August 12, 2008, with regard to the regulations implementing the Switchblade Knife Act:

> The relevant CBP regulations were implemented in 1971, following notice and comment, via Treasury Decision ("T.D.") 71–243, and the Final Rule was published in the Federal Register on September 13, 1971. See Final Rule, 36 FR 18859, Sept. 23, 1971. HQ H030606 at page 3.

The notice of proposed rulemaking, published in the Federal Register on October 24, 1970, set forth "[t]he proposed regulations . . . in tentative form as follows":

> (a) Definitions. As used in this section the term "switchblade knife" means any imported knife-
>
> (1) Having a blade which opens automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or
>
> (2) Having a handle over 3 inches in length with a stiletto or other blade style which is designed for purposes that include a primary use as a weapon, *as contrasted with blade styles designed for a primary utilitarian use*, when, by insignificant preliminary preparation a Customs officer can alter or convert such stiletto or other weapon to open automatically as described in subparagraph (1) of this paragraph, under the principle of the decision in the case of "Precise Imports Corporation and Others v. Joseph P. Kelly, Collector of Customs, and Others" (378 F. 2d 1014). *The term "utilitarian use" means use for any customary household purpose; use for any usual personal convenience; use in the practice of a profession, trade, or commercial or employment activity; use in the performance of a craft or hobby; use, in the course of such outdoor pursuits as hunting and fishing; use related to scouting activities; and use for grooming, as demonstrated by jack-knives and similar standard pocket knives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle* [italicized emphasis added]. 35 FR 16594.
>
> The introductory language to the Final Rule made the following prefatory declarations:
>
> On October 24, 1970, notice was published in the Federal Register (35 FR 16594) of a proposal to prescribe regulations to govern the importation of articles subject to the so-called Switchblade Knife Act, sections 1 – 4, 72 Stat. 562 (15 U.S.C. 1241 – 1244).
>
> Importers or other interested persons were given the opportunity to participate in the rule making through submission of relevant comments, suggestions or objections. No comments were received from importers or other persons. 36 FR 18859.

CBP announced its proposed intention to amend the regulations via Federal Register notice on August 18, 1989. See 54 FR 34186 of the same date. In the introductory "Background" in the proposed rule, CBP (then "Customs") emphasized the characteristics that would be considered in making

determinations regarding the types of blades knives bore which would be proscribed by the Switchblade Knife Act and implementing regulations, stating that:

> To implement the law, Customs adopted regulations which followed the legislative language extremely closely (19 CFR 12.95–12.103). Those regulations also specifically referred to the court decision of *Precise Imports Corp. and Others v. Joseph P. Kelly, Collector of Customs, and Others* (378 F. 2d 1014). *Because of this reference, the existing regulations appear to imply that one of the principal considerations in determining the legality of a knife is the type of blade style the weapon possesses. While style is relevant, it is not of overriding importance. Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition to an "operational" or "open" state are much more important. The Customs position, which has been supported by court decisions, is that Congressional intent was to address the problem of the importation, subsequent sale, and use of a class of quick-opening, easily concealed knives most frequently used for criminal purposes.* The deletion of the reference to the *Precise Imports* case does not imply that customs does not consider the principles contained in that case important, or that they are in any way no longer relevant. Rather, the principles in the *Precise Imports* case could not be considered too limiting [italicized emphasis added]. 54 FR 34186

There is no reference in the statutory language of the Switchblade Knife Act to the term "utilitarian use"; the only references appear in the CBP regulations. Similarly, the term has received only passing reference judicially ("The government indicated that had the knives been "designed with a single-edge blade and were primarily used for utilitarian purposes" rather than "double-edged stiletto-style blades" they would have been admitted." *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. Tenn. 1988)) and in the Federal Register notices cited above. Therefore, against the explanatory language from the Federal Register notices set forth above, we consider the ordinary meaning of the words employed:

> The term "utilitarian" is defined at *http://dictionary.reference.com/search?q=utilitarian* as:
>
> 1. pertaining to or consisting in utility.
>
> 2. having regard to utility or usefulness rather than beauty, ornamentation, etc.
>
> And at the same site:
>
> 1. having a useful function; "utilitarian steel tables".
>
> 2. having utility often to the exclusion of values; "plain utilitarian kitchenware".
>
> The term "utility" is defined at *http://www.merriam-webster.com/dictionary/utility* as:
>
> 1: fitness for some purpose or worth to some end.
>
> 2: something useful or designed for use.

From the exemplars set forth in 19 CFR Part 12.95(c)[4] and definitions set forth above, we conclude that knives with a primary (constructively or practically vs. tactically, lethally or primarily as a weapon) utilitarian design and purpose that are not captured by the definition of switchblades are admissible pursuant to the Switchblade Knife Act. Thus, for example, pocketknives, tradesman's knives and other folding knives for a certain specific use remain generally admissible, with such determinations being made, by necessity, on a case-by-case basis. Further, the opening mechanisms of imported knives must be considered and those that open instantly subjected to strict scrutiny in order to determine admissibility. As we found in HQs W479898, dated June 29, 2007 and H017909 dated December 26, 2007, that "*all* knives can potentially be used as weapons"; likewise the blades of all knives have some utility. Therefore, consideration of the characteristics of the knives should be made, focused on those emphasized ("Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition to an "operational" or "open" state . . .") in the Federal Register notice amending the regulations at issue. Thus, given the clear purpose enunciated during the notice and comment rulemaking process which amended the relevant regulation, we conclude that the type of opening mechanism is "much more important" than blade style in making admissibility determinations under the Switchblade Knife Act (see 54 FR 34186, *supra*).

We therefore find that knives with spring-assisted opening mechanisms that require minimal "human manipulation" in order to instantly spring the blades to the fully open and locked position cannot be considered to have a primary utilitarian purpose; such articles function as prohibited switchblade knives as defined by the relevant statute and regulations.

In reaching this conclusion, we reexamined the sample provided. We note that other than a bald assertion that the knives at issue are for a primary utilitarian purpose (you characterize the knife as "general carry"), no evidence substantiating that claim was presented. The knife at issue can be instantly opened into the fully locked and ready position with one hand, simply by pushing on either of the thumb tabs. Although the knife is marketed as a "release-assist" model, it nevertheless opens via human manipulation and inertia. See *Taylor*, *supra*, at footnote 1 on page 5. Further, it is possible to "lock" the safety of the knife, adjust the blade (by pushing it "against" the safety button) and to instantly deploy it by depressing the "safety" button in a manner indiscernible from a "traditional" switchblade (and in a manner which can be considered to be insignificant preliminary preparation; see 19 CFR Part 12.95(b), above). It is based upon the foregoing analysis and these factual observations that we conclude that the knife at issue is a switchblade prohibited from importation into the United States.

This decision is necessary to reconcile CBP's position regarding the admissibility of such knives and comports with the conclusions made in the following rulings:

---

[4] See also 19 CFR Part 12.96(a): Among admissible common and special purpose knives are jackknives and similar standard pocketknives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle.

In New York Ruling Letter ("NY") G83213, dated October 13, 2000, CBP determined that "a folding knife with a spring-loaded blade [which could] be easily opened by light pressure on a thumb knob located at the base of the blade, or by a flick of the wrist" was an "inertia-operated knife" that "is prohibited under the Switchblade Act and subject to seizure." See 19 C.F.R. § 12.95 (a)(1).

In NY H81084, dated May 23, 2001, CBP determined that 18 models of knives "may be opened with a simple flick of the wrist, and therefore are prohibited as inertial operated knives."

In HQ 115725, dated July 22, 2002, CBP determined that a "dual-blade folding knife" in which the "non-serrated blade is spring-assisted [and] is opened fully by the action of the spring after the user has pushed the thumb-knob protruding from the base of the blade near the handle to approximately 45 degrees from the handle" "is clearly a switchblade as defined in § 12.95(a)(4) (Knives with a detachable blade that is propelled by a spring-operated mechanism and components thereof.)"

In HQ 115713, dated July 29, 2002, CBP determined that four styles of knives, three of which could "be opened by the application of finger or thumb pressure against one of the aforementioned studs that protrudes from the side of the blade which activates a spring mechanism automatically propelling the blade into a fully open and locked position[,]" and the fourth which "opened by depressing a bar-like release on the handle which, when pushed, releases the blade which is then partially opened by a spring mechanism" were switchblades pursuant to the Switchblade Knife Act and pertinent regulations, prohibited from entry into the United States.

In H040319, dated November 26, 2008, we held that knives with spring-assisted opening mechanisms are "switchblades" within the meaning of 19 CFR Part 12.95(a)(1) and are therefore prohibited entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245).

In turning to the knives at issue in HQ 116315, examination of the sample provided and application of the regulatory criteria set forth above reveals that the subject knives are switchblades within the meaning of 19 CFR Part 12.95(a)(1) because they meet the criteria enumerated therein, *i.e.*, they open automatically by operation of inertia, gravity, or both. Accordingly, we conclude that knives with spring-assisted opening mechanisms are switchblades within the meaning of 19 CFR Part 12.95(a)(1) and are prohibited from importation into the United States.

HOLDING:

HQ 116315 is hereby revoked.

The subject knife is a switchblade within the meaning of 19 CFR 12.95(a)(1). Therefore, pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245, the subject knives are prohibited from entry into the United States.

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights and Restricted Merchandise Branch.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H043124
April 30, 2009
ENF–4–02–OT:RR:BSTC:IPR H043124 AML
CATEGORY: Restricted Merchandise

MATTHEW K. NAKACHI, ESQ.
SANDLER, TRAVIS & ROSENBERG, P.A.
505 Sansome Street
Suite 1475
San Francisco, California 94111

RE: Revocation of HQ W116730; Admissibility of Knives; Switchblade Knife Act, 15 U.S.C. §§ 1241–1245; 19 CFR Parts 12.95–12.103

DEAR MR. NAKACHI:

This is in reference to Headquarters Ruling Letter ("HQ") W116730, dated November 7, 2006, issued to you on behalf of Columbia River Knife and Tool ("CRKT"), and concerned the admissibility of the "Outburst" line of "release-assisted " knives described below, pursuant to the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.* In the referenced ruling, U.S. Customs and Border Protection (hereinafter "CBP") determined that the knives at issue were admissible into the United States pursuant to the Switchblade Knife Act. We have reconsidered the rationale of, and the admissibility determination made in HQ W116730 and found both to be in error. For the reasons set forth below, we hereby revoke HQ W116730.

FACTS:

CBP paraphrased your description of the knives at issue in HQ W116730 as follows:

> The Outburst mechanism operates via a slight spring action, which assists in the opening of the knife by application of the finger or thumb pressure on a thumb stud or disc which protrudes from the side of the blade, allowing the blade to be more easily pushed to an open and locked position. The interior of the blade is engineered such that the spring actually provides resistance, which prevents the knife from opening, until the blade is opened to approximately a 30-degree angle. Hence, when incorporated into knives, the Outburst mechanism only assists in the opening of the knife when the blade is opened to approximately 30-degrees. The user is unable to modify this restriction since at angles less than 30-degrees, the spring exerts back-pressure which holds the blade closed. . . . This back-pressure arises from the engineering of the tempered blade shape and not from the mere tightening of a blade screw.
>
> Since the Outburst mechanism holds the blade closed, it renders the tightness of the blade screw irrelevant for purposes of review under the Switchblade Knife Act. . . . As a secondary level of protection, even if the main spring of the Outburst mechanism is removed, the locking arm of the knife itself contains a ball-detent bias against the blade which prevents the knife from being flicked open by inertia or gravity. The ball-detent bias is also not readily accessible to modification by the user.

The knife models subject to this ruling are as follows:

1. The Koji Hara Ichi consists of a drop-point, pen-knife blade, in black or silver. The body of the knife is built on an open frame with Zytel scale inserts and fasteners and a removable clip[.]

2. The My Tighe consists of a stainless-steel, utilitarian blade with optional serrations. The knife includes black Zytel inserts, black hardware and a black Teflon-plated, removable clip[.]

3. The Kommer Full Throttle consists of a stainless-steel, straight blade with optional serrations. The knife is built on an open frame with a flat handle profile[.]

All of the blades are readily identifiable as being designed for personal, utilitarian use[.]

. . . Such single-handed opening is greatly beneficial to craftsmen, outdoorsmen and workers, who are engaged in a particular task when the need to simultaneously make a cut arises. For example, a fisherman could be holding a fish caught on a fishing line with one hand, while both drawing and opening an Outburst assisted-opening knife with the other hand.

A search of the CRKT website (last visited on January 13, 2009) reveals the following information regarding the "Outburst" mechanism and each of the models described above: the Koji Hara Ichi is equipped with "an ambi-dextrous thumb disk allows easy one-hand opening," and "is available in conventional non-assisted opening models, or with our patented OutBurst™ assisted opening mechanism, which instantly springs the blade fully open after you have opened the blade approximately 30 degrees." Descriptions of the "My Tighe" and "Kommer Full Throttle" models repeat the "springs the blade to fully open" statement *verbatim*.

ISSUE:

Whether the subject knives are prohibited from entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and the CBP Regulations promulgated pursuant thereto set forth in 19 CFR §§ 12.95–12.103.

LAW AND ANALYSIS:

Pursuant to the Act of August 12, 1958 (Pub. L. 85–623, codified at 15 U.S.C. §§ 1241–1245, otherwise known as the "Switchblade Knife Act"), whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined or imprisoned, or both.

The Switchblade Knife Act defines "interstate commerce" at 15 U.S.C. § 1241(a):

The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

The Switchblade Knife Act defines "switchblade knife" at 15 U.S.C. § 1241(b):

The term "switchblade knife" means any knife having a blade which opens automatically--

(1) by hand pressure applied to a button or other device in the handle of the knife, or

(2) by operation of inertia, gravity, or both[.]

The CBP Regulations promulgated pursuant to the Switchblade Knife Act are set forth in 19 CFR §§ 12.95–12.103. We note the following definitions:

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows:

(a) Switchblade knife. "Switchblade knife" means any imported knife, or components thereof, or any class of imported knife, including "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof[.]

(b) Insignificant preliminary preparation. "Insignificant preliminary preparation" means preparation with the use of ordinarily available tools, instruments, devices, and materials by one having no special manual training or skill for the purpose of modifying blade heels, relieving binding parts, altering spring restraints, or making similar minor alterations which can be accomplished in a relatively short period of time.

Other pertinent regulations are as follows:

§ 12.96 Imports unrestricted under the Act.

(a) Common and special purpose knives. Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry *provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1)* [italicized emphasis added] . . .

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. § 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. § 1595a(c).

The plain language of the Switchblade Knife Act and relevant CBP regulations prohibit, *inter alia*, the importation of knives which are for use as weapons while explicitly permitting the importation of "common and special purpose" knives (see 19 CFR 12.95(c) "Utilitarian Use" and 12.96(a) ("Unrestricted Imports")). Several courts have addressed the breadth of the prohibition set forth in the statute. See, *e.g.*, *Precise Imports Corp. v. Kelly*, 378 F.2d 1014, 1017 (2d Cir. 1967), *cert. denied*, 389 U.S. 973, 19 L. Ed. 2d 465, 88 S. Ct. 472 (1967), in which the Court of Appeals for the Second Circuit stated that:

> The report of the Senate Committee on Interstate and Foreign Commerce which recommended passage of the Switchblade Knife Act stated that the enforcement of state laws banning switchblade knives would be extremely difficult as long as such knives could be freely obtained in interstate commerce, and added:
>
> > "In supporting enactment of this measure, however, your committee considers that the purpose to be achieved goes beyond merely aiding States in local law enforcement. The switchblade knife is, by design and use, almost exclusively the weapon of the thug and the delinquent. Such knives are not particularly adapted to the requirements of the hunter or fisherman, and sportsmen generally do not employ them. It was testified that, practically speaking, there is no legitimate use for the switchblade to which a conventional sheath or jackknife is not better suited. This being the case, your committee believes that it is in the national interest that these articles be banned from interstate commerce." S.Rep. No. 1980, 85th Cong., 2d Sess., reprinted in 2 U.S. Code Cong. & Ad. News 1958, at 3435–37.
>
> The congressional purpose of aiding the enforcement of state laws against switchblade knives and of barring them from interstate commerce could be easily frustrated if knives which can be quickly and easily made into switchblade knives, and one of whose primary uses is as weapons, could be freely shipped in interstate commerce and converted into switchblade knives upon arrival at the state of destination. We decline to construe the act as permitting such facile evasion.
>
> . . . We hold, therefore, that a knife may be found to be a switchblade knife within the meaning of the Switchblade Knife Act if it is found that it can be made to open automatically by hand pressure, inertia, or gravity after insignificant alterations, and that one of its primary purposes is for use as a weapon.

In *Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988) the court, in describing a Balisong knife stated that:

> [T]he district court described a Balisong knife as "basically a folding knife with a split handle." It went on to set out its prime use: while the exotic knife has some utilitarian use, it is most often associated with the martial arts and with combat . . . [and is] potentially dangerous, lethal . . . ." Citing another district court decision involving the same issue, *Precise Imports Corp. v. Kelly*, 378 F.2d 1014 (2d Cir.), *cert. denied*, 389 U.S. 973, 19 L. Ed. 2d 465, 88 S. Ct. 472 (1967) (upholding a seizure of certain knives with no legitimate purpose), the district court described it as of "minimal value" and distinguished another "seminal case interpreting the Act", *United States v. 1,044 Balisong Knives*, No. 70–

> 110 (D. Ore. Sept. 28, 1970) (refusing to support seizure). The district court concluded that "congress intended to prohibit knives that opened automatically, ready for instant use . . . [and] was not concerned with whether the knife's blade would merely be exposed by gravity", . . . [it] intended 'open' to mean 'ready for use.' " *Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988).

See also *Taylor v. McManus*, 661 F. Supp. 11, 14–15 (E.D. Tenn. 1986), in which the Court of Appeals for the Eastern District of Tennessee observed:

> In examining the congressional record, it seems obvious that congress intended to prohibit knives which opened automatically, ready for instant use. Rep. Kelly, for example, described the switchblade "as a weapon (which) springs out at the slightest touch and is ready for instant violence." *Switchblade Knives: Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce*, House of Rep., 85th Cong., 2d Sess. 13, 29 (1958). She also noted that the prohibited gravity knife opens and "anchors in place automatically. Every bit as fast as the switchblade, it has proved to be as effective a killer." *Id.* at 29. Similarly, Rep. Delaney described the prohibited gravity knives as "knives (which) open and lock automatically at a quick flick of the wrist." 104 CONG. REC., 85th Cong., 2nd Sess. 12398 (June 26, 1958). (emphasis supplied). Apparently, then, Congress was not concerned with whether the knife's blade would merely be exposed by gravity. Instead, they intended "open" to mean "ready for use", as exhibited in Rep. Kelley's testimony that the switchblade opened "ready for instant violence" and her and Rep. Delaney's comments that the gravity knife opened and locked automatically. While the Court does not intend to read into the Statute a requirement that the blades "lock" automatically, it does seem apparent that Congress intended "open" to mean "ready for use". Obviously a knife that has not locked into an open position is not ready for use. Since the Balisong knives cannot be used until the second handle is manually folded back and clasped, the Court finds that they do not open automatically by force of gravity or inertia.[5]

Based primarily on 15 U.S.C. § 1241(b)(1) (see also the first clause of 19 CFR Part 12.95(a)(1)) which defines a switchblade knife as being a knife having a blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, as well as reliance upon the exception set forth at 19 CFR Part 12.95(c) regarding knives with a blade style designed for a primary utilitarian use, CBP decided in several rulings, including HQ W116730, that knives with spring-assisted opening mechanisms were not switchblades as contemplated by the Switchblade Knife Act and implementing regulations.

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[5] The conclusion regarding Balisong knives was reversed by *Taylor v. United States*, 848 F.2d 715, 1988 U.S. App. LEXIS 7761 (6th Cir. Tenn. 1988): "There is sufficient indication in the legislative history that the intent was to exclude these martial arts weapons, which even the district court admitted "can be opened very rapidly, perhaps in less than 5 seconds . . . [and] are potentially dangerous, lethal weapons." *Id.* at 720. Further, Balisongs were added to the list of prohibited knives when the regulations were amended in 1990. See the discussion of the regulatory amendments in HQ H030606, dated August 12, 2008, page 4.

Notwithstanding, because of the intrinsic health and public safety concerns underlying the statute and regulations, it is necessary to reassess our position regarding knives with spring-assisted opening mechanisms as 1) there are no judicial decisions interpreting, other than in the context of balisong knives (discussed above), 15 U.S.C. § 1241(b)(2) and the second clause of 19 Part CFR 12.95(a) (discussed below) and 2) CBP has issued inconsistent rulings, of which HQ W116730 is one, regarding the issue of whether knives with spring-assisted opening mechanisms are admissible or prohibited from importation into the United States.

In *Alaska Trojan P'ship v. Gutierrez*, 425 F.3d 620, 628 (9th Cir. Alaska 2005), the Court of Appeals for the 9th Circuit stated, with regard to the interpretation of agency regulations that:

> "In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *McCarthy v. Bronson*, 500 U.S. 136, 139, 114 L. Ed. 2d 194, 111 S. Ct. 1737 (1991) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 100 L. Ed. 2d 313, 108 S. Ct. 1811 (1988)) (alteration in original). When a statute or regulation defines a term, that definition controls, and the court need not look to the dictionary or common usage. *Compare F.D.I.C. v. Meyer*, 510 U.S. 471, 476, 127 L. Ed. 2d 308, 114 S. Ct. 996 (1994) ("In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning."). An agency's interpretation of a regulation must "conform with the wording and purpose of the regulation." *Public Citizen Inc. v. Mineta*, 343 F.3d 1159, 1166 (9th Cir. 2003).

Because of the existence of conflicting rulings (*i.e.*, rulings which have determined that knives with spring-assisted opening mechanisms are switchblades as defined in the statute and others which have made the opposite conclusion), we have reexamined the definition of the word "switchblade knife" set forth at15 U.S.C. § 1241(b) and 19 CFR Part 12.95(a)(1) and have determined that the definition set forth therein captures and proscribes, in addition to "traditional" switchblades, the importation of knives with spring-assisted opening mechanisms, often equipped with thumb studs or protrusions affixed to the base of the blade (rather than in the handle of the knives as set forth in the first clause of 19 CFR Part 12.95(a)(1)). The relevant regulatory language identifies and defines "switchblade knives" by exemplars (" "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives") and by definition ("or any class of imported knife . . . which has one or more of the following characteristics or identities: (1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, *or any knife with a blade which opens automatically by operation of inertia, gravity or both*[.]")

In reconsidering what types of knives are contemplated by the statute, we interpret the controlling terms according to their common meanings[6]. The

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[6] A fundamental canon of statutory construction requires that "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42, 62 L. Ed. 2d 199, 100 S. Ct. 311 (1979); see also 2A Norman J. Singer, Sutherland Statutory Construction § 46:01 (6th ed. 2000). *United States v. Lehman*, 225 F.3d 426, 429 (4th Cir. S.C. 2000).

term "automatically" is defined at *http://www.merriam-webster.com/dictionary/automatically* as:

> 1 a: largely or wholly involuntary ; especially : reflex 5 <automatic blinking of the eyelids> b: acting or done spontaneously or unconsciously c: done or produced as if by machine : mechanical <the answers were automatic> 2: having a self-acting or self-regulating mechanism <an automatic transmission> 3 of a firearm : firing repeatedly until the trigger is released.

The term "inertia" is defined at *http://www.merriam-webster.com/dictionary/inertia* as:

> 1 a: a property of matter by which it remains at rest or in uniform motion in the same straight line unless acted upon by some external force b: an analogous property of other physical quantities (as electricity).

See also, *http://physics.about.com/od/glossary/g/inertia.htm:* Definition: Inertia is the name for the tendency of an object in motion to remain in motion, or an object at rest to remain at rest, unless acted upon by a force. This concept was quantified in Newton's First Law of Motion; and *http://dictionary.reference.com/browse/inertia:* 2. Physics. a. the property of matter by which it retains its state of rest or its velocity along a straight line so long as it is not acted upon by an external force.

In *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. Tenn. 1988), the United States Court of Appeals for the Sixth Circuit, in analyzing the terms of the statute and regulations at issue stated that:

> "Automatically" as used in the statute does not necessarily mean simply by operation of some inanimate connected force such as the spring in a literal switchblade. For example, the type of gravity or "flick" knife which is indisputably within the statute requires some human manipulation in order to create or unleash the force of "gravity" or "inertia" which makes the opening "automatic."

Knives equipped with spring- and release-assisted opening mechanisms are knives which "require[ ] some human manipulation in order to create or unleash the force of "gravity" or "inertia" which makes the opening "automatic." " See *Taylor, supra*. Despite the fact that they differ in design (most if not all are equipped with thumb studs affixed to the base of the blunt side of the blade) from a traditional switchblade (in which the button that activates the spring mechanism is located in the handle of the knife), the spring-assisted mechanisms cause the knives to open fully for instant use, potentially as a weapon. Such knives are prohibited by the Switchblade Knife Act.

Our interpretation of 15 U.S.C. § 1241(b) and 19 CFR 12.95(a)(1) is supported by case law. In *Demko v. United States*, 44 Fed. Cl. 83, 88–89 (Fed. Cl. 1999), the Court of Federal Claims, in analyzing a regulation regarding the grandfathered sale of "street sweeper" shotguns, recited the following interpretations of the word "or" as used in statutes and regulations:

> "Generally the term 'or' functions grammatically as a coordinating conjunction and joins two separate parts of a sentence." *Ruben v. Secretary of DHHS*, 22 Cl. Ct. 264, 266 (1991) (noting that "or" is generally ascribed disjunctive intent unless contrary to legislative intent). As a disjunctive, the word "or" connects two parts of a sentence, "but discon-

> nect[s] their meaning, the meaning in the second member excluding that in the first." *Id.* (quoting G. Curme, A Grammar of the English Language, Syntax 166 (1986)); see *Quindlen v. Prudential Ins. Co.*, 482 F.2d 876, 878 (5th Cir. 1973) (noting disjunctive results in alternatives, which must be treated separately). Nonetheless, courts have not adhered strictly to such rules of statutory construction. See *Ruben*, 22 Cl. Ct. at 266. For instance, "it is settled that 'or' may be read to mean 'and' when the context so indicates." *Willis v. United States*, 719 F.2d 608, 612 (2d Cir. 1983); see *Ruben*, 22 Cl. Ct. at 266 (quoting same); see also *DeSylva v. Ballentine*, 351 U.S. 570, 573, 100 L. Ed. 1415, 76 S. Ct. 974 (1956) ("We start with the proposition that the word 'or' is often used as a careless substitute for the word 'and'; that is, it is often used in phrases where 'and' would express the thought with greater clarity."); *Union Ins. Co. v. United States*, 73 U.S. 759, 764, 18 L. Ed. 879 (1867) ("But when we look beyond the mere words to the obvious intent we cannot help seeing the word 'or' must be taken conjunctively. . . . This construction impairs no rights of the parties . . . and carries into effect the true intention of Congress. . . .").

In analyzing the language of 15 U.S.C. § 1241(b) and 19 CFR Part 12.95(a)(1), we conclude that the word "or" is used conjunctively yet distinguishes the paradigm switchblade knife (paraphrased: spring action blade with a button in the handle) from other knives which function similarly to the paradigm switchblade but do not have the "traditional" configuration or function. Given its legislative and judicial history, the Switchblade Knife Act is intended to proscribe the importation of any knife that opens automatically by hand pressure applied to a button or device in the handle of the knife and *any* knife with a blade which opens automatically by operation of inertia, gravity or both.

The knives at issue open via inertia – once pressure is applied to the thumb stud (or protrusion at the base of the blade), the blade continues in inertial motion (caused by the combined effect of manual and spring-assisted pressure) until it is stopped by the locking mechanism of the knife. Such knives open instantly for potential use as a weapon. We therefore conclude, in consideration of the authorities and sources Switchblade Knife Act and implementing regulations, that the knives with spring-and release- assisted opening mechanisms, that such knives are described and prohibited by 15 U.S.C. § 1241(b)(2) and 19 CFR Part 12.95(a)(1).

We also have reconsidered our interpretation of the terms "utilitarian use", as we have in several rulings found knives with spring-assisted opening mechanisms to be admissible because they were equipped with blades for "utilitarian use". The regulation defines, albeit by exemplar, the types of knife (subject to the condition precedent set forth in 19 CFR 12.96: Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry *provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1)* [italicized emphasis added] . . .) that are considered to be "utilitarian" for purposes of the statute. See 19 CFR 12.95(c):

> (c) Utilitarian use. "Utilitarian use" includes but is not necessarily limited to use:
>
> (1) For a customary household purpose;
>
> (2) For usual personal convenience, including grooming;

(3) In the practice of a profession, trade, or commercial or employment activity;

(4) In the performance of a craft or hobby;

(5) In the course of such outdoor pursuits as hunting and fishing; and

(6) In scouting activities.

As we stated in HQ H030606, dated August 12, 2008, with regard to the regulations implementing the Switchblade Knife Act:

> The relevant CBP regulations were implemented in 1971, following notice and comment, via Treasury Decision ("T.D.") 71–243, and the Final Rule was published in the Federal Register on September 13, 1971. See Final Rule, 36 FR 18859, Sept. 23, 1971. HQ H030606 at page 3.

The notice of proposed rulemaking, published in the Federal Register on October 24, 1970, set forth "[t]he proposed regulations . . . in tentative form as follows":

> (a) Definitions. As used in this section the term "switchblade knife" means any imported knife-
>
> (1) Having a blade which opens automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or
>
> (2) Having a handle over 3 inches in length with a stiletto or other blade style which is designed for purposes that include a primary use as a weapon, *as contrasted with blade styles designed for a primary utilitarian use*, when, by insignificant preliminary preparation a Customs officer can alter or convert such stiletto or other weapon to open automatically as described in subparagraph (1) of this paragraph, under the principle of the decision in the case of "Precise Imports Corporation and Others v. Joseph P. Kelly, Collector of Customs, and Others" (378 F. 2d 1014). *The term "utilitarian use" means use for any customary household purpose; use for any usual personal convenience; use in the practice of a profession, trade, or commercial or employment activity; use in the performance of a craft or hobby; use, in the course of such outdoor pursuits as hunting and fishing; use related to scouting activities; and use for grooming, as demonstrated by jack-knives and similar standard pocket knives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle* [italicized emphasis added]. 35 FR 16594.
>
> The introductory language to the Final Rule made the following prefatory declarations:
>
> On October 24, 1970, notice was published in the Federal Register (35 FR 16594) of a proposal to prescribe regulations to govern the importation of articles subject to the so-called Switchblade Knife Act, sections 1 – 4, 72 Stat. 562 (15 U.S.C. 1241 – 1244).
>
> Importers or other interested persons were given the opportunity to participate in the rule making through submission of relevant comments, suggestions or objections. No comments were received from importers or other persons. 36 FR 18859.

CBP announced its proposed intention to amend the regulations via Federal Register notice on August 18, 1989. See 54 FR 34186 of the same date. In the introductory "Background" in the proposed rule, CBP (then "Customs") emphasized the characteristics that would be considered in making determinations regarding the types of blades knives bore which would be proscribed by the Switchblade Knife Act and implementing regulations, stating that:

> To implement the law, Customs adopted regulations which followed the legislative language extremely closely (19 CFR 12.95–12.103). Those regulations also specifically referred to the court decision of *Precise Imports Corp. and Others v. Joseph P. Kelly, Collector of Customs, and Others* (378 F. 2d 1014). *Because of this reference, the existing regulations appear to imply that one of the principal considerations in determining the legality of a knife is the type of blade style the weapon possesses. While style is relevant, it is not of overriding importance. Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition to an "operational" or "open" state are much more important. The Customs position, which has been supported by court decisions, is that Congressional intent was to address the problem of the importation, subsequent sale, and use of a class of quick-opening, easily concealed knives most frequently used for criminal purposes.* The deletion of the reference to the *Precise Imports* case does not imply that customs does not consider the principles contained in that case important, or that they are in any way no longer relevant. Rather, the principles in the Precise Imports case could not be considered too limiting [italicized emphasis added]. 54 FR 34186

There is no reference in the statutory language of the Switchblade Knife Act to the term "utilitarian use"; the only references appear in the CBP regulations. Similarly, the term has received only passing reference judicially ("The government indicated that had the knives been "designed with a single-edge blade and were primarily used for utilitarian purposes" rather than "double-edged stiletto-style blades" they would have been admitted." *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. Tenn. 1988)) and in the Federal Register notices cited above. Therefore, against the explanatory language from the Federal Register notices set forth above, we consider the ordinary meaning of the words employed:

> The term "utilitarian" is defined at *http://dictionary.reference.com/search?q =utilitarian* as:
>
> 1. pertaining to or consisting in utility.
>
> 2. having regard to utility or usefulness rather than beauty, ornamentation, etc.
>
> And at the same site:
>
> 1. having a useful function; "utilitarian steel tables".
>
> 2. having utility often to the exclusion of values; "plain utilitarian kitchenware".
>
> The term "utility" is defined at *http://www.merriam-webster.com/dictionary/utility* as:
>
> 1: fitness for some purpose or worth to some end.

2: something useful or designed for use.

From the exemplars set forth in 19 CFR Part 12.95(c)[7], and definitions set forth above we conclude that knives with a primary (constructively or practically vs. tactically, lethally or primarily as a weapon) utilitarian design and purpose that are not captured by the definition of switchblades are admissible pursuant to the Switchblade Knife Act. Thus, for example, pocketknives, tradesman's knives and other folding knives for a certain specific use remain generally admissible, with such determinations being made, by necessity, on a case-by-case basis. Further, the opening mechanisms of imported knives must be considered and those that open instantly subjected to strict scrutiny in order to determine admissibility. As we found in HQs W479898, dated June 29, 2007 and H017909 dated December 26, 2007, that "*all* knives can potentially be used as weapons"; likewise the blades of all knives have some utility. Therefore, consideration of the characteristics of the knives should be made, focused on those emphasized ("Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition to an "operational" or "open" state . . . ") in the Federal Register notice amending the regulations at issue. Thus, given the clear purpose enunciated during the notice and comment rulemaking process which amended the relevant regulation, we conclude that the type of opening mechanism is "much more important" than blade style in making admissibility determinations under the Switchblade Knife Act (see 54 FR 34186, *supra*).

We therefore find that knives with spring-assisted opening mechanisms that require minimal "human manipulation" in order to instantly spring the blades to the fully open and locked position cannot be considered to have a primary utilitarian purpose; such articles function as prohibited switchblade knives as defined by the relevant statute and regulations.

In reaching this conclusion, we reexamined the sample provided. We note that other than a bald assertion that the knives at issue are for a primary utilitarian purpose (you state that "[a]ll of the blades are readily identifiable as being designed for personal, utilitarian use[.]"), no evidence substantiating that claim was presented. The knife at issue can be instantly opened into the fully locked and ready position with one hand[8], simply by pushing on either of the thumb tabs. Although the knife is marketed as a "release-assist" model, it nevertheless opens via human manipulation and inertia. See *Taylor, supra* at footnote 1 on page 6. Further, it is possible to "lock" the safety of the knife, adjust the blade (by pushing it "against" the safety button) and to instantly deploy it in a manner indiscernible from a "traditional" switchblade (and in a manner which can be considered to be insignificant preliminary preparation; see 19 CFR 12.95(b), above). It is based upon this analysis and these factual observations that we conclude that the knife at issue is a switchblade prohibited from importation into the United States.

This decision is necessary to reconcile CBP's position regarding the admis-

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[7] See also 19 CFR Part 12.96(a): Among admissible common and special purpose knives are jackknives and similar standard pocketknives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle.

[8] See the marketing statements from the CRKT website in the "FACTS" section above.

sibility of such knives and comports with the conclusions made in the following rulings:

In New York Ruling Letter ("NY") G83213, dated October 13, 2000, CBP determined that "a folding knife with a spring-loaded blade [which could] be easily opened by light pressure on a thumb knob located at the base of the blade, or by a flick of the wrist" was an "inertia-operated knife" that "is prohibited under the Switchblade Act and subject to seizure. See 19 C.F.R. §12.95 (a)(1)."

In NY H81084, dated May 23, 2001, CBP determined that 18 models of knives "may be opened with a simple flick of the wrist, and therefore are prohibited as inertial operated knives."

In HQ 115725, dated July 22, 2002, CBP determined that a "dual-blade folding knife" in which the "non-serrated blade is spring-assisted [and] is opened fully by the action of the spring after the user has pushed the thumb-knob protruding from the base of the blade near the handle to approximately 45 degrees from the handle" "is clearly a switchblade as defined in § 12.95(a)(4) (Knives with a detachable blade that is propelled by a spring-operated mechanism and components thereof.)"

In HQ 115713, dated July 29, 2002, CBP determined that four styles of knives, three of which could "be opened by the application of finger or thumb pressure against one of the aforementioned studs that protrudes from the side of the blade which activates a spring mechanism automatically propelling the blade into a fully open and locked position[,]" and the fourth which "opened by depressing a bar-like release on the handle which, when pushed, releases the blade which is then partially opened by a spring mechanism" were switchblades pursuant to the Switchblade Knife Act and pertinent regulations, prohibited from entry into the United States.

In H040319, dated November 26, 2008, we held that knives with spring-assisted opening mechanisms are "switchblades" within the meaning of 19 CFR Part 12.95(a)(1) and are therefore prohibited entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245).

In turning to the knives at issue in HQ W116730, examination of the description of the "OutBurst" release mechanism and application of the regulatory criteria set forth above reveals that the subject knives are switchblades within the meaning of 15 U.S.C. § 1241(b)(2) and 19 CFR Part 12.95(a)(1) because they meet the criteria enumerated therein, *i.e.*, they open automatically by operation of inertia, gravity, or both.

HOLDING:

HQ W116730 is hereby revoked.

The subject knives, equipped with the "OutBurst" release-assist mechanism, are switchblade knives within the meaning of 15 U.S.C. § 1241(b) and 19 CFR Part 12.95(a)(1). Therefore, pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245, the subject knives are prohibited from entry into the United States.

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights and,
Restricted Merchandise Branch.

[ATTACHMENT G]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H043126
April 30, 2009
ENF–4–02–OT:RR:BSTC:IPR H043126 AML
CATEGORY: Restricted Merchandise

MS. LARA A. AUSTRINS
MR. THOMAS J. O'DONNELL
RODRIGUEZ, O'DONNELL ROSS
8430 W. Bryn Mawr Ave., Suite 525
Chicago, Illinois 60631

RE: Revocation of HQ H016666; Admissibility of Knives; Switchblade Knife Act, 15 U.S.C. §§ 1241–1245; 19 CFR Parts 12.95–12.103

DEAR MS. AUSTRINS AND MR. O'DONNELL:

This is in reference to Headquarters Ruling Letter ("HQ") H016666, dated December 12, 2007, which concerned the admissibility of the "Tailwind", a "release-assisted " knife described below, pursuant to the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.* In the referenced ruling, U.S. Customs and Border Protection (hereinafter "CBP") determined that the knives at issue were admissible into the United States pursuant to the Switchblade Knife Act. We have reconsidered HQ H016666 and the rulings upon which it relied and found it and them to be in error. For the reasons set forth below, we hereby revoke HQ H016666.

FACTS:

CBP paraphrased your description of the knives at issue in HQ H016666 as follows:

[T]he knife at issue, marketed as the "Tailwind" (model number HD0071), as a single edged, release assisted, folding knife. The knife has a "false edge grind" on the topside of the 3 ½ inch blade and measures 4 ½ inches when closed. When extended, the overall length of the knife is 7 ¾ inches. The knife weighs 4.2 ounces.

The Tailwind name is derived from the patented opening mechanism. The opening mechanism, subject of U.S. Patent number 7,051,441, is equipped "with an assist spring, which assists in the opening of the knife only after the knife has been manually opened to approximately thirty degrees." The blade must be opened manually until the blade reaches approximately thirty degrees at which point the mechanism engages and the blade springs open to its extended and locked position. The knife is refolded by depressing a manual release.

With regard to the blade of the knife, you indicated that:

The knife's blade is such that it is designed for a primary utilitarian use and the intended customer base for the knife is wide and varied.

ISSUE:

Whether the subject knives are prohibited from entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and the CBP Regulations promulgated pursuant thereto set forth in 19 CFR §§ 12.95–12.103.

LAW AND ANALYSIS:

Pursuant to the Act of August 12, 1958 (Pub. L. 85–623, codified at 15 U.S.C. §§ 1241–1245, otherwise known as the "Switchblade Knife Act"), whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined or imprisoned, or both.

The Switchblade Knife Act defines "interstate commerce" at 15 U.S.C. § 1241(a):

> The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

The Switchblade Knife Act defines "switchblade knife" at 15 U.S.C. § 1241(b):

> The term "switchblade knife" means any knife having a blade which opens automatically—
>
> (1) by hand pressure applied to a button or other device in the handle of the knife, or
>
> (2) by operation of inertia, gravity, or both[.]

The CBP Regulations promulgated pursuant to the Switchblade Knife Act are set forth in 19 CFR §§ 12.95–12.103. We note the following definitions:

> § 12.95 Definitions.
>
> Terms as used in §§12.96 through 12.103 of this part are defined as follows:
>
> (a) Switchblade knife. "Switchblade knife" means any imported knife, or components thereof, or any class of imported knife, including "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives, which has one or more of the following characteristics or identities:
>
> (1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;
>
> (2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;
>
> (3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof[.]

(b) Insignificant preliminary preparation. "Insignificant preliminary preparation" means preparation with the use of ordinarily available tools, instruments, devices, and materials by one having no special manual training or skill for the purpose of modifying blade heels, relieving binding parts, altering spring restraints, or making similar minor alterations which can be accomplished in a relatively short period of time.

Other pertinent regulations are as follows:

§ 12.96 Imports unrestricted under the Act.

(a) Common and special purpose knives. Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry *provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1)* [italicized emphasis added] . . .

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. § 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. § 1595a(c).

The plain language of the Switchblade Knife Act and relevant CBP regulations prohibit, *inter alia*, the importation of knives which are for use as weapons while explicitly permitting the importation of "common and special purpose" knives (see 19 CFR 12.95(c) "Utilitarian Use" and 12.96(a) ("unrestricted imports")). Several courts have addressed the breadth of the prohibition set forth in the statute. See, *e.g.*, *Precise Imports Corp. v. Kelly*, 378 F.2d 1014, 1017 (2d Cir. 1967), *cert. denied*, 389 U.S. 973, 19 L. Ed. 2d 465, 88 S. Ct. 472 (1967), in which the Court of Appeals for the Second Circuit stated that:

> The report of the Senate Committee on Interstate and Foreign Commerce which recommended passage of the Switchblade Knife Act stated that the enforcement of state laws banning switchblade knives would be extremely difficult as long as such knives could be freely obtained in interstate commerce, and added:
>
> "In supporting enactment of this measure, however, your committee considers that the purpose to be achieved goes beyond merely aiding States in local law enforcement. The switchblade knife is, by design and use, almost exclusively the weapon of the thug and the delinquent. Such knives are not particularly adapted to the requirements of the hunter or fisherman, and sportsmen generally do not employ them. It was testified that, practically speaking, there is no legitimate use for the switchblade to which a conventional sheath or jackknife is not better suited. This being the case, your committee believes that it is in the national interest that these articles be banned from interstate commerce." S.Rep. No. 1980, 85th Cong., 2d Sess., reprinted in 2 U.S. Code Cong. & Ad. News 1958, at 3435–37.
>
> The congressional purpose of aiding the enforcement of state laws against switchblade knives and of barring them from interstate com-

> merce could be easily frustrated if knives which can be quickly and easily made into switchblade knives, and one of whose primary uses is as weapons, could be freely shipped in interstate commerce and converted into switchblade knives upon arrival at the state of destination. We decline to construe the act as permitting such facile evasion.
>
> . . . We hold, therefore, that a knife may be found to be a switchblade knife within the meaning of the Switchblade Knife Act if it is found that it can be made to open automatically by hand pressure, inertia, or gravity after insignificant alterations, and that one of its primary purposes is for use as a weapon.

In *Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988) the court, in describing a Balisong knife stated that:

> [T]he district court described a Balisong knife as "basically a folding knife with a split handle." It went on to set out its prime use: while the exotic knife has some utilitarian use, it is most often associated with the martial arts and with combat . . . [and is] potentially dangerous, lethal. . . ." Citing another district court decision involving the same issue, *Precise Imports Corp. v. Kelly*, 378 F.2d 1014 (2d Cir.), *cert. denied*, 389 U.S. 973, 19 L. Ed. 2d 465, 88 S. Ct. 472 (1967) (upholding a seizure of certain knives with no legitimate purpose), the district court described it as of "minimal value" and distinguished another "seminal case interpreting the Act", *United States v. 1,044 Balisong Knives*, No. 70–110 (D. Ore. Sept. 28, 1970) (refusing to support seizure). The district court concluded that "congress intended to prohibit knives that opened automatically, ready for instant use . . . [and] was not concerned with whether the knife's blade would merely be exposed by gravity", . . . [it] intended 'open' to mean 'ready for use.' " *Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988).

See also *Taylor v. McManus*, 661 F. Supp. 11, 14–15 (E.D. Tenn. 1986), in which the Court of Appeals for the Eastern District of Tennessee observed:

> In examining the congressional record, it seems obvious that congress intended to prohibit knives which opened automatically, ready for instant use. Rep. Kelly, for example, described the switchblade "as a weapon (which) springs out at the slightest touch and is ready for instant violence." *Switchblade Knives: Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce*, House of Rep., 85th Cong., 2d Sess. 13, 29 (1958). She also noted that the prohibited gravity knife opens and "anchors in place automatically. Every bit as fast as the switchblade, it has proved to be as effective a killer." *Id.* at 29. Similarly, Rep. Delaney described the prohibited gravity knives as "knives (which) open and lock automatically at a quick flick of the wrist." 104 CONG. REC., 85th Cong., 2nd Sess. 12398 (June 26, 1958). (emphasis supplied). Apparently, then, Congress was not concerned with whether the knife's blade would merely be exposed by gravity. Instead, they intended "open" to mean "ready for use", as exhibited in Rep. Kelley's testimony that the switchblade opened "ready for instant violence" and her and Rep. Delaney's comments that the gravity knife opened and locked automatically. While the Court does not intend to read into the Statute a requirement that the blades "lock" automatically, it does seem apparent that Congress intended "open" to mean "ready for use". Obviously a knife that has not locked into an open position is not ready for use.

> Since the Balisong knives cannot be used until the second handle is manually folded back and clasped, the Court finds that they do not open automatically by force of gravity or inertia.[9]

Based primarily on 15 U.S.C. § 1241(b)(1) (see also the first clause of 19 CFR Part 12.95(a)(1)) which defines a switchblade knife as being a knife having a blade which opens automatically by hand pressure applied to a button or device in the handle, as well as reliance upon the exception set forth at 19 CFR Part 12.95(c) regarding knives with a blade style designed for a primary utilitarian use, CBP decided in several rulings, including HQ H016666, that knives with spring- and release-assisted opening mechanisms are not switchblades as contemplated by the Switchblade Knife Act and implementing regulations.

Notwithstanding, because of the intrinsic health and public safety concerns underlying the statute and regulations, it is necessary to reassess our position regarding knives with spring-assisted opening mechanisms as 1) there are no judicial decisions interpreting, other than in the context of balisong knives (discussed above), 15 U.S.C. § 1241(b)(2) and the second clause of 19 Part CFR 12.95(a) (discussed below) and 2) CBP has issued inconsistent rulings, of which HQ H016666 is one, regarding the issue of whether knives with spring-assisted opening mechanisms are admissible or prohibited from importation into the United States.

In *Alaska Trojan P'ship v. Gutierrez*, 425 F.3d 620, 628 (9th Cir. Alaska 2005), the Court of Appeals for the 9th Circuit stated, with regard to the interpretation of agency regulations that:

> "In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *McCarthy v. Bronson*, 500 U.S. 136, 139, 114 L. Ed. 2d 194, 111 S. Ct. 1737 (1991) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 100 L. Ed. 2d 313, 108 S. Ct. 1811 (1988)) (alteration in original). When a statute or regulation defines a term, that definition controls, and the court need not look to the dictionary or common usage. *Compare F.D.I.C. v. Meyer*, 510 U.S. 471, 476, 127 L. Ed. 2d 308, 114 S. Ct. 996 (1994) ("In the absence of such a definition, we construe a statutory term in accordance with its ordinary or natural meaning."). An agency's interpretation of a regulation must "conform with the wording and purpose of the regulation." *Public Citizen Inc. v. Mineta*, 343 F.3d 1159, 1166 (9th Cir. 2003).

Because of the existence of conflicting rulings (*i.e.*, rulings which have determined that knives with spring-assisted opening mechanisms are switchblades as defined in the statute and others which have made the opposite conclusion), we have reexamined the definition of the word "switchblade knife" set forth at 15 U.S.C. § 1241(b) and 19 CFR Part

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[9] The conclusion regarding Balisong knives was reversed by *Taylor v. United States*, 848 F.2d 715, 1988 U.S. App. LEXIS 7761 (6th Cir. Tenn. 1988): "There is sufficient indication in the legislative history that the intent was to exclude these martial arts weapons, which even the district court admitted "can be opened very rapidly, perhaps in less than 5 seconds . . . [and] are potentially dangerous, lethal weapons." *Id.* at 720. Further, Balisongs were added to the list of prohibited knives when the regulations were amended in 1990. See the discussion of the regulatory amendments in HQ H030606, dated August 12, 2008, page 4.

12.95(a)(1) and have determined that the definition set forth therein captures and proscribes, in addition to "traditional" switchblades, the importation of knives with spring-assisted opening mechanisms, often equipped with thumb studs or protrusions affixed to the base of the blade (rather than in the handle of the knives as set forth in the first clause of 19 CFR Part 12.95(a)(1)). The relevant regulatory language identifies and defines "switchblade knives" by exemplars (" "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives") and by definition ("or any class of imported knife . . . which has one or more of the following characteristics or identities: (1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, *or any knife with a blade which opens automatically by operation of inertia, gravity or both*[.]")

In reconsidering what types of knives are contemplated by the statute, we interpret the controlling terms according to their common meanings[10]. The term "automatically" is defined at *http://www.merriam-webster.com/dictionary/ automatically* as:

> 1 a: largely or wholly involuntary ; especially : reflex 5 <automatic blinking of the eyelids> b: acting or done spontaneously or unconsciously c: done or produced as if by machine : mechanical <the answers were automatic> 2: having a self-acting or self-regulating mechanism <an automatic transmission> 3of a firearm : firing repeatedly until the trigger is released.
>
> The term "inertia" is defined at *http://www.merriam-webster.com/dictionary/inertia* as:
>
> 1 a: a property of matter by which it remains at rest or in uniform motion in the same straight line unless acted upon by some external force b: an analogous property of other physical quantities (as electricity).
>
> See also, *http://physics.about.com/od/glossary/g/inertia.htm:* Definition: Inertia is the name for the tendency of an object in motion to remain in motion, or an object at rest to remain at rest, unless acted upon by a force. This concept was quantified in Newton's First Law of Motion; and *http://dictionary.reference.com/browse/ inertia:* 2. Physics. a. the property of matter by which it retains its state of rest or its velocity along a straight line so long as it is not acted upon by an external force.

In *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. Tenn. 1988), the United States Court of Appeals for the Sixth Circuit, in analyzing the terms of the statute and regulations at issue stated that:

> "Automatically" as used in the statute does not necessarily mean simply by operation of some inanimate connected force such as the spring in a literal switchblade. For example, the type of gravity or "flick" knife which is indisputably within the statute requires some human manipulation in order to create or unleash the force of "gravity" or "inertia" which makes the opening "automatic."

---

[10] A fundamental canon of statutory construction requires that "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42, 62 L. Ed. 2d 199, 100 S. Ct. 311 (1979); see also 2A Norman J. Singer, *Sutherland Statutory Construction* § 46:01 (6th ed. 2000). *United States v. Lehman*, 225 F.3d 426, 429 (4th Cir. S.C. 2000).

Knives equipped with spring- and release-assisted opening mechanisms are knives which "require[ ] some human manipulation in order to create or unleash the force of "gravity" or "inertia" which makes the opening "automatic." " See *Taylor, supra*. Despite the fact that they differ in design (most if not all are equipped with thumb studs affixed to the base of the blunt side of the blade) from a traditional switchblade (in which the button that activates the spring mechanism is located in the handle of the knife), the spring-assisted mechanisms cause, via inertia, the knives to open fully for instant use, potentially as a weapon. Such knives are prohibited by the Switchblade Knife Act.

Our interpretation of 15 U.S.C. § 1241(b) and 19 CFR 12.95(a)(1) is supported by case law. In *Demko v. United States*, 44 Fed. Cl. 83, 88–89 (Fed. Cl. 1999), the Court of Federal Claims, in analyzing a regulation regarding the grandfathered sale of "street sweeper" shotguns, recited the following interpretations of the word "or" as used in statutes and regulations:

> "Generally the term 'or' functions grammatically as a coordinating conjunction and joins two separate parts of a sentence." *Ruben v. Secretary of DHHS*, 22 Cl. Ct. 264, 266 (1991) (noting that "or" is generally ascribed disjunctive intent unless contrary to legislative intent). As a disjunctive, the word "or" connects two parts of a sentence, "but disconnect[s] their meaning, the meaning in the second member excluding that in the first." *Id.* (quoting G. Curme, A Grammar of the English Language, Syntax 166 (1986)); see *Quindlen v. Prudential Ins. Co.*, 482 F.2d 876, 878 (5th Cir. 1973) (noting disjunctive results in alternatives, which must be treated separately). Nonetheless, courts have not adhered strictly to such rules of statutory construction. See *Ruben*, 22 Cl. Ct. at 266. For instance, "it is settled that 'or' may be read to mean 'and' when the context so indicates." *Willis v. United States*, 719 F.2d 608, 612 (2d Cir. 1983); see *Ruben*, 22 Cl. Ct. at 266 (quoting same); see also *DeSylva v. Ballentine*, 351 U.S. 570, 573, 100 L. Ed. 1415, 76 S. Ct. 974 (1956) ("We start with the proposition that the word 'or' is often used as a careless substitute for the word 'and'; that is, it is often used in phrases where 'and' would express the thought with greater clarity."); *Union Ins. Co. v. United States*, 73 U.S. 759, 764, 18 L. Ed. 879 (1867) ("But when we look beyond the mere words to the obvious intent we cannot help seeing the word 'or' must be taken conjunctively. . . . This construction impairs no rights of the parties . . . and carries into effect the true intention of Congress. . . .").

In analyzing the language of 15 U.S.C. § 1241(b) and 19 CFR Part 12.95(a)(1), we conclude that the word "or" is used conjunctively yet distinguishes the paradigm switchblade knife (paraphrased: spring action blade with a button in the handle) from other knives which function similarly to the paradigm switchblade but do not have the "traditional" configuration or function. Given its legislative and judicial history, the Switchblade Knife Act is intended to proscribe the importation of any knife that opens automatically by hand pressure applied to a button or device in the handle of the knife *and* any knife with a blade which opens automatically by operation of inertia, gravity or both.

The knives at issue open via inertia – once pressure is applied to the thumb stud (or protrusion at the base of the blade), the blade continues in inertial motion (caused by the combined effect of manual and spring-

assisted pressure) until it is stopped by the locking mechanism of the knife. Such knives open instantly for potential use as a weapon. We therefore conclude, in consideration of the authorities and sources Switchblade Knife Act and implementing regulations, that the knives with spring-and release- assisted opening mechanisms, that such knives are described and prohibited by 15 U.S.C. § 1241(b)(2) and 19 CFR Part 12.95(a)(1).

We also have reconsidered our interpretation of the terms "utilitarian use", as we have in several rulings found knives with spring-assisted opening mechanisms to be admissible because they were equipped with blades for utilitarian use. The regulation defines, albeit by exemplar, the types of knife (subject to the condition precedent set forth in 19 CFR 12.96: Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry *provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1)* [italicized emphasis added]. . .) that are considered to be "utilitarian" for purposes of the statute. See 19 CFR 12.95(c):

> (c) Utilitarian use. "Utilitarian use" includes but is not necessarily limited to use:
>
> (1) For a customary household purpose;
>
> (2) For usual personal convenience, including grooming;
>
> (3) In the practice of a profession, trade, or commercial or employment activity;
>
> (4) In the performance of a craft or hobby;
>
> (5) In the course of such outdoor pursuits as hunting and fishing; and
>
> (6) In scouting activities.

As we stated in HQ H030606, dated August 12, 2008, with regard to the regulations implementing the Switchblade Knife Act:

> The relevant CBP regulations were implemented in 1971, following notice and comment, via Treasury Decision ("T.D.") 71–243, and the Final Rule was published in the Federal Register on September 13, 1971. See Final Rule, 36 FR 18859, Sept. 23, 1971. HQ H030606 at page 3.

The notice of proposed rulemaking, published in the Federal Register on October 24, 1970, set forth "[t]he proposed regulations . . . in tentative form as follows":

> (a) Definitions. As used in this section the term "switchblade knife" means any imported knife-
>
> (1) Having a blade which opens automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or
>
> (2) Having a handle over 3 inches in length with a stiletto or other blade style which is designed for purposes that include a primary use as a weapon, *as contrasted with blade styles designed for a primary utilitarian use*, when, by insignificant preliminary preparation a Customs officer can alter or convert such stiletto or other weapon to open automatically as described in subparagraph (1) of this paragraph, under the principle of the decision in the case of "Precise Imports Corporation and Others v. Joseph P. Kelly, Collector of Customs, and Others" (378 F. 2d

> 1014). *The term "utilitarian use" means use for any customary household purpose; use for any usual personal convenience; use in the practice of a profession, trade, or commercial or employment activity; use in the performance of a craft or hobby; use, in the course of such outdoor pursuits as hunting and fishing; use related to scouting activities; and use for grooming, as demonstrated by jack-knives and similar standard pocket knives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle* [italicized emphasis added]. 35 FR 16594.
>
> The introductory language to the Final Rule made the following prefatory declarations:
>
> > On October 24, 1970, notice was published in the Federal Register (35 FR 16594) of a proposal to prescribe regulations to govern the importation of articles subject to the so-called Switchblade Knife Act, sections 1 – 4, 72 Stat. 562 (15 U.S.C. 1241 – 1244).
> >
> > Importers or other interested persons were given the opportunity to participate in the rule making through submission of relevant comments, suggestions or objections. No comments were received from importers or other persons. 36 FR 18859.

CBP announced its proposed intention to amend the regulations via Federal Register notice on August 18, 1989. See 54 FR 34186 of the same date. In the introductory "Background" in the proposed rule, CBP (then "Customs") emphasized the characteristics that would be considered in making determinations regarding the types of blades knives bore which would be proscribed by the Switchblade Knife Act and implementing regulations, stating that:

> To implement the law, Customs adopted regulations which followed the legislative language extremely closely (19 CFR 12.95–12.103). Those regulations also specifically referred to the court decision of *Precise Imports Corp. and Others v. Joseph P. Kelly, Collector of Customs, and Others* (378 F. 2d 1014). *Because of this reference, the existing regulations appear to imply that one of the principal considerations in determining the legality of a knife is the type of blade style the weapon possesses. While style is relevant, it is not of overriding importance. Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition to an "operational" or "open" state are much more important. The Customs position, which has been supported by court decisions, is that Congressional intent was to address the problem of the importation, subsequent sale, and use of a class of quick-opening, easily concealed knives most frequently used for criminal purposes.* The deletion of the reference to the *Precise Imports* case does not imply that customs does not consider the principles contained in that case important, or that they are in any way no longer relevant. Rather, the principles in the *Precise Imports* case could not be considered too limiting [italicized emphasis added]. 54 FR 34186

There is no reference in the statutory language of the Switchblade Knife Act to the term "utilitarian use"; the only references appear in the CBP regulations. Similarly, the term has received only passing reference judicially ("The government indicated that had the knives been "designed with a

single-edge blade and were primarily used for utilitarian purposes" rather than "double-edged stiletto-style blades" they would have been admitted." *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. Tenn. 1988)) and in the Federal Register notices cited above. Therefore, against the explanatory language from the Federal Register notices set forth above, we consider the ordinary meaning of the words employed:

> The term "utilitarian" is defined at *http://dictionary.reference.com/search?q=utilitarian* as:
>
> 1. ertaining to or consisting in utility.
>
> 2. having regard to utility or usefulness rather than beauty, ornamentation, etc.
>
> And at the same site:
>
> 1. having a useful function; "utilitarian steel tables".
>
> 2. having utility often to the exclusion of values; "plain utilitarian kitchenware".
>
> The term "utility" is defined at *http://www.merriam-webster.com/dictionary/utility* as:
>
> 1: fitness for some purpose or worth to some end.
>
> 2: something useful or designed for use.

From the exemplars set forth in 19 CFR 12.95(c), and definitions set forth above, we conclude that knives with a primary (constructively or practically vs. tactically, lethally or primarily as a weapon) utilitarian design and purpose that are not captured by the definition of switchblades are admissible pursuant to the Switchblade Knife Act. Thus, for example, pocketknives, tradesman's knives and other folding knives for a certain specific use remain generally admissible, with such determinations being made, by necessity, on a case-by-case basis. Further, the opening mechanisms of imported knives must be considered and those that open instantly subjected to strict scrutiny in order to determine admissibility. As we found in HQs W479898, dated June 29, 2007 and H017909 dated December 26, 2007, that "*all* knives can potentially be used as weapons"; likewise the blades of all knives have some utility. Therefore, consideration of the characteristics of the knives should be made, focused on those emphasized ("Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition to an "operational" or "open" state . . .") in the Federal Register notice amending the regulations at issue. Thus, given the clear purpose enunciated during the notice and comment rulemaking process which amended the relevant regulation, we conclude that the type of opening mechanism is "much more important" than blade style in making admissibility determinations under the Switchblade Knife Act (see 54 FR 34186, *supra*).

We therefore find that knives with spring-assisted opening mechanisms that require minimal "human manipulation" in order to instantly spring the blades to the fully open and locked position cannot be considered to have a primary utilitarian purpose; such articles function as prohibited switchblade knives as defined by the relevant statute and regulations.

In reaching this conclusion, we reexamined the sample provided. We note that other than a bald assertion that the knives at issue are for a "primary

utilitarian purpose", no evidence substantiating that claim was presented. The knife at issue can be instantly opened into the fully locked and ready position with one hand, simply by pushing/applying thumb pressure on either of the thumb tabs. Although the knife is marketed as a "release assist" model, it nevertheless opens via human manipulation and inertia. See *Taylor, supra*. It is based upon this analysis and these factual observations that we conclude that the knife at issue is a switchblade prohibited from importation into the United States.

This decision is necessary to reconcile CBP's position regarding the admissibility of such knives and comports with the conclusions made in the following rulings:

In New York Ruling Letter ("NY") G83213, dated October 13, 2000, CBP determined that "a folding knife with a spring-loaded blade [which could] be easily opened by light pressure on a thumb knob located at the base of the blade, or by a flick of the wrist" was an "inertia-operated knife" that "is prohibited under the Switchblade Act and subject to seizure. See 19 C.F.R. §12.95 (a)(1)."

In NY H81084, dated May 23, 2001, CBP determined that 18 models of knives "may be opened with a simple flick of the wrist, and therefore are prohibited as inertial operated knives."

In HQ 115725, dated July 22, 2002, CBP determined that a "dual-blade folding knife" in which the "non-serrated blade is spring-assisted [and] is opened fully by the action of the spring after the user has pushed the thumb-knob protruding from the base of the blade near the handle to approximately 45 degrees from the handle" "is clearly a switchblade as defined in § 12.95(a)(4) (Knives with a detachable blade that is propelled by a spring-operated mechanism and components thereof.)"

In HQ 115713, dated July 29, 2002, CBP determined that four styles of knives, three of which could "be opened by the application of finger or thumb pressure against one of the aforementioned studs that protrudes from the side of the blade which activates a spring mechanism automatically propelling the blade into a fully open and locked position[,]" and the fourth which "opened by depressing a bar-like release on the handle which, when pushed, releases the blade which is then partially opened by a spring mechanism" were switchblades pursuant to the Switchblade Knife Act and pertinent regulations, prohibited from entry into the United States.

In H040319, dated November 26, 2008, we held that knives with spring-assisted opening mechanisms are "switchblades" within the meaning of 19 CFR Part 12.95(a)(1) and are therefore prohibited entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245).

In turning to the knives at issue in HQ H016666, examination of and the description of the Tailwind assisted release mechanism and application of the regulatory criteria set forth above reveals that the subject knives are switchblades within the meaning of 19 CFR Part 12.95(a)(1) because they meet the criteria enumerated therein, *i.e.*, they open automatically by operation of inertia, gravity, or both.

HOLDING:

HQ H016666 is revoked.

The subject knives equipped with the Tailwind release assist mechanism are switchblade knives within the meaning of 15 U.S.C. § 1241(b)(2) and 19

CFR Part 12.95(a)(1). Therefore, pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245, the subject knives are prohibited from entry into the United States.

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights and,
Restricted Merchandise Branch.

[ATTACHMENT H]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H043127
April 30, 2009
ENF–4–02–OT:RR:BSTC:IPR H043127 AML
CATEGORY: Restricted Merchandise

MR. MATTHEW K. NAKACHI
SANDLER, TRAVIS & ROSENBERG, P.A.
505 Sansome Street
Suite 1475
San Francisco, California 94111

RE: Revocation of HQ H032255; Admissibility of Knives; Switchblade Knife Act, 15 U.S.C. §§ 1241–1245; 19 CFR Parts 12.95–12.103

DEAR MR. NAKACHI:

This is in reference to Headquarters Ruling Letter ("HQ") H032255, dated August 12, 2008, which concerned the admissibility of the "VanHoy Assist", a "release-assisted" knife described below, pursuant to the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.* In the referenced ruling, U.S. Customs and Border Protection (hereinafter "CBP") determined that the knives at issue were admissible into the United States pursuant to the Switchblade Knife Act. We have reconsidered the rationale of, and the admissibility determination made in HQ H032255 and found both to be in error. For the reasons set forth below, we hereby revoke HQ H032255.

FACTS:

CBP paraphrased your description of the knives at issue in HQ H032255[11] as follows:

> [T]he knife at issue, tentatively planned by your client to be called the "VanHoy Assist," is a knife "of new design." The prototype is of standard knife construction with a single-edged, utilitarian blade. You state that "the unique nature of the knife is that the assisted-opening mechanism operates by thumb or hand pressure downward on the blade/thumbscrew (rather than the traditional upward pressure)." You further

[11] In the ruling request, you indicated that the "VanHoy Assist" was similar to the knife at issue in New York Ruling Letter ("NY") I86378, dated October 1, 2002. Other than the similarity of the thumb stud on the base of the blade, there is no indication that the knife at issue in NY I86378 bore a spring-assisted opening mechanism.

indicate that "the downward pressure releases the locking mechanism and then a slight spring action assists the opening of the blade to the fully locked position." The knife has a 3 inch blade and measures approximately 4⅝ inches when closed. When extended, the overall length of the knife is approximately 7⅝ inches. The knife is refolded by depressing a manual release.

ISSUE:

Whether the subject knives are prohibited from entry into the United States pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245 and CBP Regulations promulgated pursuant thereto set forth in 19 CFR §§ 12.95–12.103.

LAW AND ANALYSIS:

Pursuant to the Act of August 12, 1958 (Pub. L. 85–623, codified at 15 U.S.C. §§ 1241–1245, otherwise known as the "Switchblade Knife Act"), whoever knowingly introduces, or manufactures for introduction, into interstate commerce, or transports or distributes in interstate commerce, any switchblade knife, shall be fined or imprisoned, or both.

The Switchblade Knife Act defines "interstate commerce" at 15 U.S.C. § 1241(a):

The term "interstate commerce" means commerce between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof.

The Switchblade Knife Act defines "switchblade knife" at 15 U.S.C. § 1241(b):

The term "switchblade knife" means any knife having a blade which opens automatically—

(1) by hand pressure applied to a button or other device in the handle of the knife, or

(2) by operation of inertia, gravity, or both[.]

The CBP Regulations promulgated pursuant to the Switchblade Knife Act are set forth in 19 CFR §§ 12.95–12.103. We note the following definitions:

§ 12.95 Definitions.

Terms as used in §§ 12.96 through 12.103 of this part are defined as follows:

(a) Switchblade knife. "Switchblade knife" means any imported knife, or components thereof, or any class of imported knife, including "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives, which has one or more of the following characteristics or identities:

(1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, or any knife with a blade which opens automatically by operation of inertia, gravity, or both;

(2) Knives which, by insignificant preliminary preparation, as described in paragraph (b) of this section, can be altered or converted so as to open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both;

(3) Unassembled knife kits or knife handles without blades which, when fully assembled with added blades, springs, or other parts, are knives which open automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(4) Knives with a detachable blade that is propelled by a spring-operated mechanism, and components thereof[.]

(b) Insignificant preliminary preparation. "Insignificant preliminary preparation" means preparation with the use of ordinarily available tools, instruments, devices, and materials by one having no special manual training or skill for the purpose of modifying blade heels, relieving binding parts, altering spring restraints, or making similar minor alterations which can be accomplished in a relatively short period of time.

Other pertinent regulations are as follows:

§ 12.96 Imports unrestricted under the Act.

(a) Common and special purpose knives. Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry *provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1)* [italicized emphasis added] . . .

§ 12.97 Importations contrary to law.

Importations of switchblade knives, except as permitted by 15 U.S.C. § 1244, are importations contrary to law and are subject to forfeiture under 19 U.S.C. § 1595a(c).

The plain language of the Switchblade Knife Act and relevant CBP regulations prohibit, *inter alia*, the importation of knives which are for use as weapons while explicitly permitting the importation of "common and special purpose" knives (see 19 CFR 12.95(c) "Utilitarian Use" and 12.96(a) ("Unrestricted Imports")). Several courts have addressed the breadth of the prohibition set forth in the statute. See, *e.g.*, *Precise Imports Corp. v. Kelly*, 378 F.2d 1014, 1017 (2d Cir. 1967), *cert. denied*, 389 U.S. 973, 19 L. Ed. 2d 465, 88 S. Ct. 472 (1967), in which the Court of Appeals for the Second Circuit stated that:

The report of the Senate Committee on Interstate and Foreign Commerce which recommended passage of the Switchblade Knife Act stated that the enforcement of state laws banning switchblade knives would be extremely difficult as long as such knives could be freely obtained in interstate commerce, and added:

"In supporting enactment of this measure, however, your committee considers that the purpose to be achieved goes beyond merely aiding States in local law enforcement. The switchblade knife is, by design and use, almost exclusively the weapon of the thug and the delinquent. Such knives are not particularly adapted to the requirements of the hunter or fisherman, and sportsmen generally do not employ them. It was testified that, practically speaking, there is no legitimate use for the switchblade to which a conventional sheath or jackknife is not better

> suited. This being the case, your committee believes that it is in the national interest that these articles be banned from interstate commerce." S.Rep. No. 1980, 85th Cong., 2d Sess., reprinted in 2 U.S. Code Cong. & Ad. News 1958, at 3435–37.
>
> The congressional purpose of aiding the enforcement of state laws against switchblade knives and of barring them from interstate commerce could be easily frustrated if knives which can be quickly and easily made into switchblade knives, and one of whose primary uses is as weapons, could be freely shipped in interstate commerce and converted into switchblade knives upon arrival at the state of destination. We decline to construe the act as permitting such facile evasion.
>
> . . . We hold, therefore, that a knife may be found to be a switchblade knife within the meaning of the Switchblade Knife Act if it is found that it can be made to open automatically by hand pressure, inertia, or gravity after insignificant alterations, and that one of its primary purposes is for use as a weapon.

In *Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988) the court, in describing a Balisong knife stated that:

> [T]he district court described a Balisong knife as "basically a folding knife with a split handle." It went on to set out its prime use: while the exotic knife has some utilitarian use, it is most often associated with the martial arts and with combat . . . [and is] potentially dangerous, lethal. . . ." Citing another district court decision involving the same issue, *Precise Imports Corp. v. Kelly*, 378 F.2d 1014 (2d Cir.), *cert. denied*, 389 U.S. 973, 19 L. Ed. 2d 465, 88 S. Ct. 472 (1967) (upholding a seizure of certain knives with no legitimate purpose), the district court described it as of "minimal value" and distinguished another "seminal case interpreting the Act", *United States v. 1,044 Balisong Knives*, No. 70–110 (D. Ore. Sept. 28, 1970) (refusing to support seizure). The district court concluded that "congress intended to prohibit knives that opened automatically, ready for instant use . . . [and] was not concerned with whether the knife's blade would merely be exposed by gravity", . . . [it] intended 'open' to mean 'ready for use.' " *Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988).

See also *Taylor v. McManus*, 661 F. Supp. 11, 14–15 (E.D. Tenn. 1986), in which the Court of Appeals for the Eastern District of Tennessee observed:

> In examining the congressional record, it seems obvious that congress intended to prohibit knives which opened automatically, ready for instant use. Rep. Kelly, for example, described the switchblade "as a weapon (which) springs out at the slightest touch and is ready for instant violence." *Switchblade Knives: Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce*, House of Rep., 85th Cong., 2d Sess. 13, 29 (1958). She also noted that the prohibited gravity knife opens and "anchors in place automatically. Every bit as fast as the switchblade, it has proved to be as effective a killer." *Id.* at 29. Similarly, Rep. Delaney described the prohibited gravity knives as "knives (which) open and lock automatically at a quick flick of the wrist." 104 CONG. REC., 85th Cong., 2nd Sess. 12398 (June 26, 1958). (Emphasis supplied). Apparently, then, Congress was not concerned with whether the

> knife's blade would merely be exposed by gravity. Instead, they intended "open" to mean "ready for use", as exhibited in Rep. Kelley's testimony that the switchblade opened "ready for instant violence" and her and Rep. Delaney's comments that the gravity knife opened and locked automatically. While the Court does not intend to read into the Statute a requirement that the blades "lock" automatically, it does seem apparent that Congress intended "open" to mean "ready for use". Obviously a knife that has not locked into an open position is not ready for use. Since the Balisong knives cannot be used until the second handle is manually folded back and clasped, the Court finds that they do not open automatically by force of gravity or inertia.[12]

Based primarily on 15 U.S.C. § 1241(b)(1) (see also the first clause of 19 CFR Part 12.95(a)(1)) which defines a switchblade knife as being a knife having a blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, as well as reliance upon the exception set forth at 19 CFR Part 12.95(c) regarding knives with a blade style designed for a primary utilitarian use, CBP decided in several rulings, including HQ H032255, that knives with spring- or release-assisted opening mechanisms are not switchblades as contemplated by the Switchblade Knife Act and implementing regulations.

Notwithstanding, because of the intrinsic health and public safety concerns underlying the statute and regulations, it is necessary to reassess our position regarding knives with spring-assisted opening mechanisms as 1) there are no judicial decisions interpreting, other than in the context of Balisong knives (discussed above), 15 U.S.C. § 1241(b)(2) and the second clause of 19 Part CFR 12.95(a) (discussed below) and 2) CBP has issued inconsistent rulings, of which HQ H032255 is one, regarding the issue of whether knives with spring-assisted opening mechanisms are admissible or prohibited from importation into the United States.

In *Alaska Trojan P'ship v. Gutierrez*, 425 F.3d 620, 628 (9th Cir. Alaska 2005), the Court of Appeals for the 9th Circuit stated, with regard to the interpretation of agency regulations that:

> "In ascertaining the plain meaning of [a] statute, the court must look to the particular statutory language at issue, as well as the language and design of the statute as a whole." *McCarthy v. Bronson*, 500 U.S. 136, 139, 114 L. Ed. 2d 194, 111 S. Ct. 1737 (1991) (quoting *K Mart Corp. v. Cartier, Inc.*, 486 U.S. 281, 291, 100 L. Ed. 2d 313, 108 S. Ct. 1811 (1988)) (alteration in original). When a statute or regulation defines a term, that definition controls, and the court need not look to the dictionary or common usage. *Compare F.D.I.C. v. Meyer*, 510 U.S. 471, 476, 127 L. Ed. 2d 308, 114 S. Ct. 996 (1994) ("In the absence of such a definition, we construe a statutory term in accordance with its ordinary

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[12] The conclusion regarding Balisong knives was reversed by *Taylor v. United States*, 848 F.2d 715 (6th Cir. Tenn. 1988): "There is sufficient indication in the legislative history that the intent was to exclude these martial arts weapons, which even the district court admitted "can be opened very rapidly, perhaps in less than 5 seconds . . . [and] are potentially dangerous, lethal weapons." *Id.* at 720. Further, Balisongs were added to the list of prohibited knives when the regulations were amended in 1990. See the discussion of the regulatory amendments in HQ H030606, dated August 12, 2008, page 4.

or natural meaning."). An agency's interpretation of a regulation must "conform with the wording and purpose of the regulation." *Public Citizen Inc. v. Mineta*, 343 F.3d 1159, 1166 (9th Cir. 2003).

Because of the existence of conflicting rulings (*i.e.*, rulings which have determined that knives with spring-assisted opening mechanisms are switchblades as defined in the statute and others which have made the opposite conclusion), we have reexamined the definition of the word "switchblade knife" set forth at 15 U.S.C. § 1241(b) and 19 CFR Part 12.95(a)(1) and have determined that the definition captures and proscribes, in addition to "traditional" switchblades, the importation of knives with spring-assisted opening mechanisms, often equipped with thumb studs or protrusions affixed to the base of the blade (rather than in the handle of the knives as set forth in the first clause of 19 CFR Part 12.95(a)(1)). The relevant regulatory language identifies and defines "switchblade knives" by exemplars (" "switchblade", "Balisong", "butterfly", "gravity" or "ballistic" knives") and by definition ("or any class of imported knife . . . which has one or more of the following characteristics or identities: (1) A blade which opens automatically by hand pressure applied to a button or device in the handle of the knife, *or any knife with a blade which opens automatically by operation of inertia, gravity or both*[.]")

In reconsidering what types of knives are contemplated by the statute, we interpret the controlling terms according to their common meanings[13]. The term "automatically" is defined at *http://www.merriam-webster.com/dictionary/automatically* as:

> 1 a: largely or wholly involuntary; especially: reflex 5 <automatic blinking of the eyelids> b: acting or done spontaneously or unconsciously c: done or produced as if by machine: mechanical <the answers were automatic> 2: having a self-acting or self-regulating mechanism <an automatic transmission> 3of a firearm: firing repeatedly until the trigger is released.
>
> The term "inertia" is defined at *http://www.merriam-webster.com/dictionary/inertia* as:
>
> 1 a: a property of matter by which it remains at rest or in uniform motion in the same straight line unless acted upon by some external force b: an analogous property of other physical quantities (as electricity).
>
> See also, *http://physics.about.com/od/glossary/g/inertia.htm:* Definition: Inertia is the name for the tendency of an object in motion to remain in motion, or an object at rest to remain at rest, unless acted upon by a force. This concept was quantified in Newton's First Law of Motion; and *http://dictionary.reference.com/browse/ inertia:* 2. Physics. a. the property of matter by which it retains its state of rest or its velocity

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[13] A fundamental canon of statutory construction requires that "unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning." *Perrin v. United States*, 444 U.S. 37, 42, 62 L. Ed. 2d 199, 100 S. Ct. 311 (1979); see also 2A Norman J. Singer, *Sutherland Statutory Construction* § 46:01 (6th ed. 2000). *United States v. Lehman*, 225 F.3d 426, 429 (4th Cir. S.C. 2000).

along a straight line so long as it is not acted upon by an external force.

In *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. Tenn. 1988), the United States Court of Appeals for the Sixth Circuit, in analyzing the terms of the statute and regulations at issue stated that:

> "Automatically" as used in the statute does not necessarily mean simply by operation of some inanimate connected force such as the spring in a literal switchblade. For example, the type of gravity or "flick" knife which is indisputably within the statute requires some human manipulation in order to create or unleash the force of "gravity" or "inertia" which makes the opening "automatic."

Knives equipped with spring- and release-assisted opening mechanisms are knives which "require[ ] some human manipulation in order to create or unleash the force of "gravity" or "inertia" which makes the opening "automatic." " See *Taylor, supra*. Despite the fact that they differ in design (most if not all are equipped with thumb studs affixed to the base of the blunt side of the blade; the VanHoy Assist a "button" on the blade) from a traditional switchblade (in which the button that activates the spring mechanism is located in the handle of the knife), the spring- and release-assisted mechanisms cause the knives to open fully for instant use, potentially as a weapon. Such knives are prohibited by the Switchblade Knife Act.

Our interpretation of 15 U.S.C. § 1241(b) and 19 CFR 12.95(a)(1) is supported by case law. In *Demko v. United States*, 44 Fed. Cl. 83, 88–89 (Fed. Cl. 1999), the Court of Federal Claims, in analyzing a regulation regarding the grandfathered sale of "street sweeper" shotguns, recited the following interpretations of the word "or" as used in statutes and regulations:

> "Generally the term 'or' functions grammatically as a coordinating conjunction and joins two separate parts of a sentence." *Ruben v. Secretary of DHHS*, 22 Cl. Ct. 264, 266 (1991) (noting that "or" is generally ascribed disjunctive intent unless contrary to legislative intent). As a disjunctive, the word "or" connects two parts of a sentence, "but disconnect[s] their meaning, the meaning in the second member excluding that in the first." *Id.* (quoting G. Curme, A Grammar of the English Language, Syntax 166 (1986)); see *Quindlen v. Prudential Ins. Co.*, 482 F.2d 876, 878 (5th Cir. 1973) (noting disjunctive results in alternatives, which must be treated separately). Nonetheless, courts have not adhered strictly to such rules of statutory construction. See *Ruben*, 22 Cl. Ct. at 266. For instance, "it is settled that 'or' may be read to mean 'and' when the context so indicates." *Willis v. United States*, 719 F.2d 608, 612 (2d Cir. 1983); see *Ruben*, 22 Cl. Ct. at 266 (quoting same); see also *DeSylva v. Ballentine*, 351 U.S. 570, 573, 100 L. Ed. 1415, 76 S. Ct. 974 (1956) ("We start with the proposition that the word 'or' is often used as a careless substitute for the word 'and'; that is, it is often used in phrases where 'and' would express the thought with greater clarity."); *Union Ins. Co. v. United States*, 73 U.S. 759, 764, 18 L. Ed. 879 (1867) ("But when we look beyond the mere words to the obvious intent we cannot help seeing the word 'or' must be taken conjunctively. . . . This construction impairs no rights of the parties . . . and carries into effect the true intention of Congress. . . .").

In analyzing the language of 15 U.S.C. § 1241(b) and 19 CFR Part 12.95(a)(1), we conclude that the word "or" is used conjunctively yet distinguishes the paradigm switchblade knife (paraphrased: spring action blade with a button in the handle) from other knives which function similarly to the paradigm switchblade but do not have the "traditional" configuration or function. Given its legislative and judicial history, the Switchblade Knife Act is intended to proscribe the importation of any knife that opens automatically by hand pressure applied to a button or device in the handle of the knife *and* any knife with a blade which opens automatically by operation of inertia, gravity or both.

The knives at issue open via inertia – once pressure is applied to the thumb stud (or button on the base of the blade), the blade continues in inertial motion (caused by the combined effect of manual and spring-assisted pressure) until it is stopped by the locking mechanism of the knife. Such knives open instantly for potential use as a weapon. We therefore conclude, in consideration of the authorities and sources Switchblade Knife Act and implementing regulations, that the knives with spring-and release- assisted opening mechanisms, that such knives are described and prohibited by 15 U.S.C. § 1241(b)(2) and 19 CFR Part 12.95(a)(1).

We also have reconsidered our interpretation of the terms "utilitarian use", as we have in several rulings found knives with spring-assisted opening mechanisms to be admissible because they were equipped with blades for utilitarian use. The regulation defines, albeit by exemplar, the types of knife (subject to the condition precedent set forth in 19 CFR 12.96: Imported knives with a blade style designed for a primary utilitarian use, as defined in § 12.95(c), shall be admitted to unrestricted entry *provided that in condition as entered the imported knife is not a switchblade knife as defined in § 12.95(a)(1)* [italicized emphasis added] . . .) that are considered to be "utilitarian" for purposes of the statute. See 19 CFR 12.95(c):

> (c) Utilitarian use. "Utilitarian use" includes but is not necessarily limited to use:
>
> (1) For a customary household purpose;
>
> (2) For usual personal convenience, including grooming;
>
> (3) In the practice of a profession, trade, or commercial or employment activity;
>
> (4) In the performance of a craft or hobby;
>
> (5) In the course of such outdoor pursuits as hunting and fishing; and
>
> (6) In scouting activities.

As we stated in HQ H030606, dated August 12, 2008, with regard to the regulations implementing the Switchblade Knife Act:

> The relevant CBP regulations were implemented in 1971, following notice and comment, via Treasury Decision ("T.D.") 71–243, and the Final Rule was published in the Federal Register on September 13, 1971. See Final Rule, 36 FR 18859, Sept. 23, 1971. HQ H030606 at page 3.

The notice of proposed rulemaking, published in the Federal Register on October 24, 1970, set forth "[t]he proposed regulations . . . in tentative form as follows":

(a) Definitions. As used in this section the term "switchblade knife" means any imported knife-

(1) Having a blade which opens automatically by hand pressure applied to a button or device in the handle of the knife or by operation of inertia, gravity, or both; or

(2) Having a handle over 3 inches in length with a stiletto or other blade style which is designed for purposes that include a primary use as a weapon, *as contrasted with blade styles designed for a primary utilitarian use*, when, by insignificant preliminary preparation a Customs officer can alter or convert such stiletto or other weapon to open automatically as described in subparagraph (1) of this paragraph, under the principle of the decision in the case of "Precise Imports Corporation and Others v. Joseph P. Kelly, Collector of Customs, and Others" (378 F. 2d 1014). *The term "utilitarian use" means use for any customary household purpose; use for any usual personal convenience; use in the practice of a profession, trade, or commercial or employment activity; use in the performance of a craft or hobby; use, in the course of such outdoor pursuits as hunting and fishing; use related to scouting activities; and use for grooming, as demonstrated by jack-knives and similar standard pocket knives, special purpose knives, scout knives, and other knives equipped with one or more blades of such single edge nonweapon styles as clip, skinner, pruner, sheep foot, spey, coping, razor, pen, and cuticle* [italicized emphasis added]. 35 FR 16594.

The introductory language to the Final Rule made the following prefatory declarations:

On October 24, 1970, notice was published in the Federal Register (35 FR 16594) of a proposal to prescribe regulations to govern the importation of articles subject to the so-called Switchblade Knife Act, sections 1 – 4, 72 Stat. 562 (15 U.S.C. 1241 – 1244).

Importers or other interested persons were given the opportunity to participate in the rule making through submission of relevant comments, suggestions or objections. No comments were received from importers or other persons. 36 FR 18859.

CBP announced its proposed intention to amend the regulations via Federal Register notice on August 18, 1989. See 54 FR 34186 of the same date. In the introductory "Background" in the proposed rule, CBP (then "Customs") emphasized the characteristics that would be considered in making determinations regarding the types of blades knives bore which would be proscribed by the Switchblade Knife Act and implementing regulations, stating that:

To implement the law, Customs adopted regulations which followed the legislative language extremely closely (19 CFR 12.95–12.103). Those regulations also specifically referred to the court decision of *Precise Imports Corp. and Others v. Joseph P. Kelly, Collector of Customs, and Others* (378 F. 2d 1014). *Because of this reference, the existing regulations appear to imply that one of the principal considerations in determining the legality of a knife is the type of blade style the weapon possesses. While style is relevant, it is not of overriding importance. Concealability, and the ease with which the knife can be transformed from a "safe" or*

> *"closed" condition to an "operational" or "open" state are much more important. The Customs position, which has been supported by court decisions, is that Congressional intent was to address the problem of the importation, subsequent sale, and use of a class of quick-opening, easily concealed knives most frequently used for criminal purposes.* The deletion of the reference to the *Precise Imports* case does not imply that customs does not consider the principles contained in that case important, or that they are in any way no longer relevant. Rather, the principles in the *Precise Imports* case could not be considered too limiting [italicized emphasis added]. 54 FR 34186

There is no reference in the statutory language of the Switchblade Knife Act to the term "utilitarian use"; the only references appear in the CBP regulations. Similarly, the term has received only passing reference judicially ("The government indicated that had the knives been "designed with a single-edge blade and were primarily used for utilitarian purposes" rather than "double-edged stiletto-style blades" they would have been admitted." *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. Tenn. 1988)) and in the Federal Register notices cited above. Therefore, against the explanatory language from the Federal Register notices set forth above, we consider the ordinary meaning of the words employed:

> The term "utilitarian" is defined at *http://dictionary.reference.com/search?q =utilitarian* as:
>
> 1. pertaining to or consisting in utility.
>
> 2. having regard to utility or usefulness rather than beauty, ornamentation, etc.
>
> And at the same site:
>
> 1. having a useful function; "utilitarian steel tables".
>
> 2. having utility often to the exclusion of values; "plain utilitarian kitchenware".
>
> The term "utility" is defined at *http://www.merriam-webster.com/dictionary/utility* as:
>
> 1: fitness for some purpose or worth to some end.
>
> 2: something useful or designed for use.

From the exemplars set forth in 19 CFR 12.95(c), and definitions set forth above, we conclude that knives with a primary (constructively or practically vs. tactically, lethally or primarily as a weapon) utilitarian design and purpose that are not captured by the definition of switchblades are admissible pursuant to the Switchblade Knife Act. Thus, for example, pocketknives, tradesman's knives and other folding knives for a certain specific use remain generally admissible, with such determinations being made, by necessity, on a case-by-case basis. Further, the opening mechanisms of imported knives must be considered and those that open instantly subjected to strict scrutiny in order to determine admissibility. As we found in HQs W479898, dated June 29, 2007 and H017909 dated December 26, 2007, that "*all* knives can potentially be used as weapons"; likewise the blades of all knives have some utility. Therefore, consideration of the characteristics of the knives should be made, focused on those emphasized ("Concealability, and the ease with which the knife can be transformed from a "safe" or "closed" condition

to an "operational" or "open" state . . .") in the Federal Register notice amending the regulations at issue. Thus, given the clear purpose enunciated during the notice and comment rulemaking process which amended the relevant regulation, we conclude that the type of opening mechanism is "much more important" than blade style in making admissibility determinations under the Switchblade Knife Act (see 54 FR 34186, *supra*).

We therefore find that knives with spring-assisted opening mechanisms that require minimal "human manipulation" in order to instantly spring the blades to the fully open and locked position cannot be considered to have a primary utilitarian purpose; such articles function as prohibited switchblade knives as defined by the relevant statute and regulations.

We note that other than a bald assertion that the knives at issue are for a primary utilitarian purpose (you stated that the knife is of standard construction and has a single-edged, utilitarian blade"), no evidence substantiating that claim was presented. The knife at issue can be instantly opened into the fully locked and ready position with one hand, simply by pushing on the thumb tab on the blade. Although the knife is marketed as a "release assist" model, it nevertheless opens via human manipulation and inertia. See *Taylor, supra*. It is based upon this analysis and these factual observations that we conclude that the knife at issue is a switchblade prohibited from importation into the United States.

This decision is necessary to reconcile CBP's position regarding the admissibility of such knives and comports with the conclusions made in the following rulings:

In New York Ruling Letter ("NY") G83213, dated October 13, 2000, CBP determined that "a folding knife with a spring-loaded blade [which could] be easily opened by light pressure on a thumb knob located at the base of the blade, or by a flick of the wrist" was an "inertia-operated knife" that "is prohibited under the Switchblade Act and subject to seizure. See 19 C.F.R. §12.95 (a)(1)."

In NY H81084, dated May 23, 2001, CBP determined that 18 models of knives "may be opened with a simple flick of the wrist, and therefore are prohibited as inertial operated knives."

In HQ 115725, dated July 22, 2002, CBP determined that a "dual-blade folding knife" in which the "non-serrated blade is spring-assisted [and] is opened fully by the action of the spring after the user has pushed the thumb-knob protruding from the base of the blade near the handle to approximately 45 degrees from the handle" "is clearly a switchblade as defined in § 12.95(a)(4) (Knives with a detachable blade that is propelled by a spring-operated mechanism and components thereof.)"

In HQ 115713, dated July 29, 2002, CBP determined that four styles of knives, three of which could "be opened by the application of finger or thumb pressure against one of the aforementioned studs that protrudes from the side of the blade which activates a spring mechanism automatically propelling the blade into a fully open and locked position[,]" and the fourth which "opened by depressing a bar-like release on the handle which, when pushed, releases the blade which is then partially opened by a spring mechanism" were switchblades pursuant to the Switchblade Knife Act and pertinent regulations, prohibited from entry into the United States.

In H040319, dated November 26, 1008, we held that knives with spring-assisted opening mechanisms are "switchblades" within the meaning of 19

CFR Part 12.95(a)(1) and are therefore prohibited entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245).

In turning to the knives in HQ H032255, reconsideration of the "VanHoy Assist" and its assisted-release mechanism and application of the regulatory criteria set forth above reveals that the subject knives are switchblades within the meaning of 19 CFR Part 12.95(a)(1) because they meet the criteria enumerated therein, *i.e.*, they open automatically by operation of inertia, gravity, or both.

HOLDING:

HQ H032255 is hereby revoked.

The subject knives equipped with the Tailwind release assist mechanism are switchblade knives within the meaning of 15 U.S.C. § 1241(b)(2) and 19 CFR Part 12.95(a)(1). Therefore, pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241–1245, the subject knives are prohibited from entry into the United States.

GEORGE FREDERICK MCCRAY,
Chief,
Intellectual Property Rights and,
Restricted Merchandise Branch.

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WALL BANNERS AND PENNANTS

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security.

ACTION: Notice of revocation of a tariff classification ruling letter and revocation of treatment relating to the classification of wall banners and pennants

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs and Border Protection (CBP) is revoking a ruling letter relating to the tariff classification of certain wall banners and pennants, under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA). CBP is also revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed revocation was published on March 19, 2009, in the Customs Bulletin, Volume 43, Number 12. No comments were received in response to the proposed revocation.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 21, 2009.

FOR FURTHER INFORMATION CONTACT: John Rhea, Tariff Classification and Marking Branch: (202) 325–0035

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Tile VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, a notice was published in the Customs Bulletin, Volume 43, No. 12, on March 19, 2009, proposing to revoke a ruling letter pertaining to the tariff classification of wall banners and pennants. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter ("NY") K86053, dated May 14, 2004, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the ones identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625 (c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise is-

sues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY K86053 and is revoking or modifying any other ruling not specifically identified to reflect the proper classification of the wall banners and pennants according to the analysis contained in Headquarters Ruling Letter ("HQ") H019434, set forth as an Attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 USC §1625(c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: May 4, 2009

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H019434
May 4, 2009
CLA–2 OT:RR:CTF:TCM H019434 JER
CATEGORY: Classification
TARIFF NO.: 6307.90.98

LAUREN J. LARSON, PRESIDENT
WINNING STREAK SPORTS, LLC.
2018 East Prairie Circle
Olathe, KS 66062–1268

RE: Revocation of NY K86053; 6307.90.9889, HTSUS: wool felt blend pennants and banners

DEAR MS. LARSON:

On May 14, 2004, U.S. Customs and Border Protection ("CBP") issued New York Ruling Letter ("NY") K86053 to you on behalf of Winning Streak, LLC., classifying certain pennants and banners in subheading 6307.90.85 of the Harmonized Tariff Schedule of the United States (HTSUS). After reviewing NY K86053, we have found that ruling to be in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057, 2186 (1993), notice of the proposed revocation of NY K86053 was published on March 19, 2009, in the Customs Bulletin, Volume 43, Number 12. No comments were received in response to the proposed revocation.

FACTS:

In NY K86053, the subject merchandise was described as a pennant that measures 17½″W x 40½″L and being constructed from a 420-gram/m2 wool blend felt which is composed of 70 percent wool and 30 percent acrylic. The design on the banner is produced by embroidery and applique. You also indicated that pennants which measure 13″ x 32″ and 6″ x 15″ and rectangular and square banners that are usually between 2′ and 4′ per side will be imported.

ISSUE:

Whether pennants and banners made up of wool blend felt are classified under subheading 6307.90.85, HTSUS, or under subheading 6307.90.98, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

GRI 6 provides that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only those subheadings at the same level are comparable.

The HTSUS provisions under consideration are as follows:

6307 Other made up articles, including dress patterns:

6307.90 Other:

6307.90.85 Wall banners, of man-made fibers. . . . . .

Other:

6307.90.98 Other . . . . .

Note 2 (A) to Section XI, HTSUS, provides in pertinent part that:

> Goods classifiable in chapters 50 to 55 or in heading 5809 or 5902 and of a mixture of two or more textile materials are to be classified as if consisting wholly of that one textile material which predominates by weight over each other single textile material.

Subheading Note 2(A) to Section XI, HTSUS, provides in pertinent part that:

> Products of chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under note 2 to this section for the classification of a product of chapters 50 to 55 or of heading 5809 consisting of the same textile materials.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System. While not legally binding nor dispositive, the ENs provide a commentary on

the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127 (August 23, 1989).

The ENs to heading 6307, HTSUS, provides in relevant part that:

> This heading covers made up articles of any textile material which are not included more specifically in other headings of Section XI or elsewhere in the Nomenclature.
>
> It Includes, in particular:
>
> * * *
>
> (4) Flags, pennants and banners, including bunting for entertainments, galas or other purposes.

NY K86053 classified the merchandise at issue under subheading 6307.90.85, HTSUS, which provides in relevant part for: wall banners, of man-made fibers. However, the subject wall banners and pennants are not made up of man-made fibers as required by the terms of subheading 6307.90.85, HTSUS but are instead a blend of 70% wool and 30% acrylic.

Chapter 51, HTSUS, provides for: "wool, fine or coarse animal hair; horsehair yarn and woven fabric." On the other hand, Chapter 54, HTSUS, provides for: "man-made filaments; strip and the like of man-made textile materials." Note 1 to Chapter 54, HTSUS, defines "man-made fibers" as staple fibers and filaments of organic polymers produced either by polymerization of organic monomers or by dissolution or chemical treatment of natural organic polymers.

Subheading Note 2(A) to Section XI provides in pertinent part that products of Chapters 56 to 63 containing two or more textile materials are to be regarded as consisting wholly of that textile material which would be selected under Note 2 to Section XI, HTSUS, i.e., the textile material which predominates by weight over each other single textile material. In the instant case 70% of the total finished product is wool. As such, the textile which predominates by weight over the remaining acrylic component of the subject banners and pennants is the wool fabric which is classified in Chapter 51, HTSUS. Accordingly, the subject merchandise which consists of 70% wool cannot be considered a wall banner of man-made fiber. Instead, the subject item is properly classified as if consisting wholly of wool which is the textile material that predominates by weight.

HOLDING:

By application of GRI 1, GRI 6 and Subheading Note 2(A) to Section XI, HTSUS, the subject wall banner and pennants are classified in heading 6307, HTSUS. Specifically, they are provided for in subheading 6307.90.98, HTSUS, which provides for: "Other made up articles, including dress patterns: Other: Other: Other." The 2009 column one, general rate of duty is 7% percent *ad valorem*.

EFFECT ON OTHER RULINGS:

NY K86053, dated May 14, 2004, is hereby revoked. In accordance with 19 USC §1625 (c), this ruling will become effective 60 days after publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

REVOCATION OF TWO RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF CATALYTIC CONVERTER CERAMIC SUBSTRATES

AGENCY: Customs and Border Protection; Department of Homeland Security.

ACTION: Revocation of two classification ruling letters and revocation of treatment relating to the classification of catalytic converter ceramic substrates.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that the Bureau of Customs and Border Protection (CBP) is revoking two ruling letters relating to the classification of catalytic converter ceramic substrates. CBP is also modifying or revoking any treatment previously accorded by it to substantially identical transactions. Notice of the proposed action was published on January 22, 2009, in Volume 43, Number 9, of the CUSTOMS BULLETIN. CBP received one comment in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 21, 2009.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325–0026.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other

information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke New York Ruling Letter (NY) N013892, dated July 26, 2007, and Headquarters Ruling Letter (HQ) 954365, dated September 14, 1993, pertaining to the tariff classification of catalytic converter ceramic substrates was published in the January 22, 2009, CUSTOMS BULLETIN, Volume 43, Number 5. One comment opposing the proposed action was received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised CBP during the notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In NY N013892, a catalytic converter ceramic substrate was classified in subheading 6909.19.5095, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Other, Other, Other." Since the issuance of that ruling, CBP has reviewed the classification of the catalytic converter substrate and has determined that the cited ruling is in error.

In HQ 954365, a catalytic converter ceramic substrate was classified in subheading 8708.99.5000, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705: Other parts and accessories: Other: Other: Other." Since the issuance of that ruling, CBP has reviewed the classification of the catalytic converter substrate and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY N013892 and HQ 954365 and is revoking or modifying any other ruling not specifically identified, to reflect the classification of the catalytic converter ceramic substrates according to the analysis contained in

Headquarters Ruling Letter (HQ) H015618 and H017942, set forth as Attachments A and B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

DATED: May 5, 2009

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H015618
May 5, 2009
CLA–2 OT:RR:CTF:TCM H015618 KSH
CATEGORY: Classification
TARIFF NO.: 6909.12.0000

MR. M. JASON CUNNIGHAM, ESQ.
SONNENBERG & ANDERSON
300 S. Wacker Drive
Chicago, IL 60606

RE: Revocation of NY N013892; Diesel Particulate Filter.

DEAR MR. CUNNINGHAM:

This letter is in response to your request of July 26, 2007, for reconsideration of New York Ruling Letter (NY) N013892, dated July 20, 2007, as it pertains to the classification of Diesel Particulate Filter (DPF) under the Harmonized Tariff Schedule of the United States (HTSUS). In NY N013892, the DPF was classified in subheading 6909.19.5095, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Other, Other, Other." Since the issuance of that ruling you have submitted additional information which evidences that the hardness of the DPF on the Mohs scale is nine. On the revised Mohs scale it is thirteen. Accordingly, we have reviewed NY N013892 and found it to be in error. Therefore, this ruling revokes NY N013892. In reaching this decision, additional consideration was given to the meeting held on October 29, 2007.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on January 22, 2009 in Volume 43, Number 5, of the CUSTOMS BULLETIN. One comment opposing the proposed action was received in response to the notice.

FACTS:

The DPF is a catalytic converter ceramic substrate. The DPF is part of an exhaust system used to reduce diesel exhaust emissions through a filtering process. Upon importation, the DPF does not contain a catalyst coating. The DPF filters diesel particles through a series of ceramic honeycomb channels. Gas passes through the porous material where the particulates are trapped and accumulate on the channel walls. The DPF is designed to fit into and is dedicated for use in a particular model of diesel automobile.

The DPF consists of 85–90% silicon carbide; 5–6% alumina fibres; 5–6% mullite and; 2–4% silica. The hardness of the DPF on the Mohs scale is nine. On the revised Mohs scale it is thirteen.

A Customs and Border Protection (CBP) Laboratory Report (NY20081475), dated October 20, 2008, indicates that the sample submitted consists of fifteen long honeycomb channel pieces cemented together and sealed on the outside surface with a white material. The gray channel material and white cement material are principally composed of silicon carbide and is not principally in the form of fibers. It is resistant to refractory temperatures (1500° Centigrade).

ISSUE:

Whether the DPF is classified in subheading 6909.19.5095, HTSUS, which provides for other ceramic wares for laboratory, chemical or other technical uses, or subheading 6909.12.0000, HTSUS, which provides for ceramic wares for laboratory, chemical or other technical uses having a hardness equivalent to 9 or more on the Mohs scale, or heading 8421, HTSUS, which provides for filtering or purifying machinery and apparatus for liquids or gases, or heading 8708, HTSUS, which provides for parts and accessories of motor vehicles.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

Heading 8421, HTSUS, which provides for "Centrifuges, including centrifugal dryers; filtering or purifying machinery and apparatus, for liquids or gases."

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Explanatory Note 84.21(II)(B)(4) states:

(B) Filtering or purifying machinery, etc., for gases.

These gas filters and purifiers are used to separate solid or liquid particles from gases, either to recover products of value (e.g., coal dust, metallic particles, etc., recovered from furnace flue gases), or to eliminate

harmful materials (e.g., dust extraction, removal of tar, etc., from gases or smoke fumes, removal of oil from steam engine vapours). They include:

* * * *

(4) **Other chemical filters and purifiers for air or other gases** (including catalytic converters which change carbon monoxide in the exhaust gases of motor vehicles).

* * * *

Chapter 84, note 1(b), HTSUS, states:

1. This Chapter does not cover:

(b) Machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (Chapter 69);

In part, General Explanatory Note (A) to chapter 84, HTSUS, states in relevant part that:

Since machinery or appliances (for example, pumps) of ceramic material and ceramic parts of machinery or appliances of any material (**Chapter 69**), laboratory glassware (**heading 70.17**) and machinery and appliances and parts thereof, of glass (**heading 70.19** or **70.20**) are **excluded** from this Chapter, it follows that even if a machine or mechanical appliance is covered, because of its description or nature, by a heading of this Chapter it is not to be classified therein if it has the character of an article of ceramic materials or of glass.

This applies, for example, to articles of ceramic material or of glass, incorporating components of minor importance of other materials, such as stoppers, joints, taps, etc., clamping or tightening bands or collars or other fixing or supporting devices (stands, tripods, etc.).

On the other hand, the following are, as a rule, to be taken to have lost the character of ceramic articles, laboratory glassware, or machinery or appliances and parts thereof, of ceramic material or of glass:

(i) Combinations of ceramic or glass components with a high proportion of components of other materials (e.g., of metal); also articles consisting of a high proportion of ceramic or glass components incorporated or permanently mounted in frames, cases or the like, of other materials.

The EN to heading 6909, HTSUS, reads in relevant part:

* * * *

The heading covers in particular:

* * * *

(2) Ceramic wares for other technical uses, such as pumps, valves ; retorts, vats, chemical baths and other static containers with single or double walls (e.g., for electroplating, acid storage); taps for acids; coils, fractionating or distillation coils and columns, Raschig rings for petroleum fractionating apparatus; grinding apparatus and balls, etc., for grinding mills; thread guides for textile machinery and dies for extruding man-made textiles; plates, sticks, tips and the like, for tools.

Subheading EN to subheading 6909.12 provides:

> This subheading covers high-performance ceramic articles. These articles are composed of a crystalline ceramic matrix (e.g. of alumina, silicon carbide, zirconia, or nitrides of silicon, boron or aluminium, or of combinations thereof): whiskers or fibres of reinforcing material (e.g. of metal or graphite) may also be dispersed in the matrix to form a composite ceramic material.
>
> These articles are characterized by a matrix which has a very low porosity and in which the grain size is very small; by high resistance to wear, corrosion, fatigue and thermal shock; by high-temperature strength; and by strength-to-weight ratios comparable to or better than those of steel.
>
> They are often used in place of steel or other metal parts in mechanical applications requiring close dimensional tolerances (e.g. engine turbocharger rotors, rolling contact bearings and machine tools).
>
> The Mohs scale mentioned in this subheading rates a material by its ability to scratch the surface of the material below it on the scale. Materials are rated from 1 (for talc) to 10 (for diamond). Most of the high-performance ceramic materials fall near the top of the scale. Silicon carbide and aluminium oxide, both of which are used in high-performance ceramics, fall at 9 or above on the Mohs scale. To distinguish among harder materials, the Mohs scale is sometimes expanded, with talc as 1 and diamond as 15. On the expanded Mohs scale, fused alumina has a hardness equivalent to 12, and silicon carbide has a hardness equivalent to 13.

The commenter argues that CBP's reliance on Note 1(b) to Chapter 84, HTSUS, is misplaced because the note applies to "machinery and appliances" and not to "apparatus." Heading 8421, HTSUS, provides for both machinery and apparatus. There is no indication that the ceramic substrates are considered "appliances" and not "machinery." Moreover, Note 5 to Section XVI, HTSUS, states that, "For the purposes of these notes, the expression "machine" means any machine, machinery, plant, equipment, apparatus or appliance cited in the headings of chapter 84 or 85." The terms of the notes to Section XVI, HTSUS, and the terms of chapter 84,HTSUS, must be considered in *pari materia*. As such, CBP is unwilling to parse the terms of the heading to construe the provision as the commenter has suggested.

The substrates are made of ceramic material. In accordance with Note 1(b) to chapter 84, HTSUS, the ceramic substrates are precluded from classification under heading 8421, HTSUS, because they have the character of ceramic articles.[14] Consequently, the substrates are not classifiable under subheading 8421.99.00, HTSUS.

The substrates fall within the purview of high-performance ceramics as they are a composite ceramic composed in part of silicon carbide, are machined to exacting dimensional tolerances for use in the automotive indus-

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[14] Assuming *arguendo*, as the commenter has suggested that the ceramic substrates are classifiable in heading 8421, HTSUS, in accordance with GRI 2(a) as an incomplete or unfinished article, they are nevertheless excluded by operation of Note 1(b) to Chapter 84, HTSUS.

try, and have a hardness equivalent to more than 9 on the Mohs scale. As such, the substrates are within the purview of the subheading EN description. As such, the DPF is classified in subheading 6909.12, HTSUS.

Heading 8708, HTSUS, provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705." You argue that the DPF should be classified in heading 8708, HTSUS, because it plays a crucial role to the diesel automobile's function by reducing emissions in accordance with the legal requirements for its operation in the United States.

Note 2 to Section XVII, excludes various items from classification as parts and accessories of motor vehicles. It reads in part:

> The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> * * * *
>
> (e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;

The criteria set forth in the General Explanatory Notes to Section XVII regarding parts and accessories provide the following:

> It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:
>
> (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).
>
> and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).
>
> and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).

The ceramic substrates are not parts excluded by section XVII, note 2, HTSUS, because they are not a machine or mechanical appliance nor a part of headings 8401 to 8479, HTSUS. As previously noted, in accordance with Note 1(b) to Chapter 84, HTSUS, the ceramic substrates are precluded from classification under chapter 84, HTSUS.

The ceramic substrates are suitable for use solely or principally with the motor vehicles of chapter 87, HTSUS. However, Additional U.S. Rule of Interpretation (AUSR) 1(c) provides:

> A provision for parts of an article covers products solely or principally used as a part of such articles, but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory[.]

The commenter also argues that insofar as the substrates are suitable for use solely with a motor vehicle and are not excluded by Section XVII Notes 1 through 3, the substrates must be classified in heading 8708, HTSUS. The commenter further argues that heading 6909, HTSUS, does not provide the level of specificity necessary to preclude classification in heading 8708, HTSUS.

At importation, the substrates at issue are clearly identifiable as ceramic articles. Heading 6909, HTSUS, which provides for "Ceramic wares for labo-

ratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture ; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods" is more specific than heading 8708, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705." Heading 6909, HTSUS, most narrowly and definitely describes the ceramic substrate and has the requirements that are the most difficult to satisfy. See Additional U.S. Rule of Interpretation 1(c). Numerous court cases have held that an *eo nomine* designation will prevail over a provision of general description. See Sharp Microelectronics Technology, Inc., v. United States, 122 F.3d 1446 (Sept. 2, 1997). It logically follows, therefore, that a provision which names a good, heading 6909, HTSUS, in this case, must prevail over a heading that provides for parts, but which does not identify any particular article. Accordingly, the ceramic substrates are classified in heading 6909, HTSUS.

HOLDING:

Pursuant to GRI 1 and Additional U.S. Rule of Interpretation 1(c), the DPF is classified in heading 6909, HTSUS. It is specifically provided for in subheading 6909.12.0000, HTSUS, which provides for: "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Articles having a hardness equivalent to 9 or more on the Mohs scale." The column one, general rate of duty is 4% *ad valorem*.

EFFECT ON OTHER RULINGS:

NY N013892, dated July 20, 2007, is hereby revoked.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H017942
May 5, 2009
CLA–2 OT:RR:CTF:TCM H017942 KSH
CATEGORY: Classification
TARIFF NO.: 6909

MR. SHUN MATSUSHITA
NGK-LOCKE, INC.
1000 Town Center
Southfield, MI 48075

RE: Revocation of HQ 954365; Catalytic Converter Ceramic Substrates.

DEAR MR. MATSUSHITA:

This letter is to inform you that U.S. Customs and Border Protection

(CBP) has reconsidered Headquarters Ruling Letter (HQ) 954365, issued to NGK-Locke, Inc., on September 14, 1993, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of catalytic converter ceramic substrates. The ceramic substrates were classified under heading 8708, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705." We have reviewed that ruling and found it to be in error. Therefore, this ruling revokes HQ 954365.

HQ 954365 is a decision on a specific protest. A protest is designed to handle entries of merchandise which have entered the U.S. and been liquidated by CBP. A final determination of a protest, pursuant to Part 174, CBP Regulations (19 CFR 174), cannot be modified or revoked as it is applicable only to the merchandise which was the subject of the entry protested. Furthermore, CBP lost jurisdiction over the protested entries in HQ 955742 when notice of denial of the protest was received by the protestant. See, San Francisco Newspaper Printing Co. v. U.S., 9 CIT 517, 620 F.Supp. 738 (1935).

However, CBP can modify or revoke a protest review decision to change the legal principles set forth in the decision. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), 60 days after the date of issuance, CBP may propose a modification or revocation of a prior interpretive ruling or decision by publication and solicitation of comments in the CUSTOMS BULLETIN. This revocation will not affect the entries which were the subject of Protest 1101–93–100122, but will be applicable to any unliquidated entries, or future importations of similar merchandise 60 days after publication of the final notice of revocation in the CUSTOMS BULLETIN, unless an earlier date is requested pursuant to 19 CFR 177.12(e)(2)(ii).

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on January 22, 2009 in Volume 43, Number 5, of the CUSTOMS BULLETIN. One comment opposing the proposed action was received in response to the notice.

FACTS:

As stated in HQ 954365, the merchandise consists of catalytic converter ceramic substrates. The substrate is a specially designed honeycombed body made of ceramic cordierite. The production of the honeycomb begins with a combination of alumina, kalil, and talc contained within a slurry box. Water is then added to bind the components. The honeycomb is extruded and fired to produce the catalytic converter substrate. After importation into the U.S., it is then coated with a catalytic agent, bracketed in place in a metal converter housing, and inserted in a motor vehicle exhaust system. The substrate, contained within a catalytic converter, is suitable for use solely with a motor vehicle for exhaust gas purification in order to convert carbon monoxide, hydrocarbons, and nitrogen oxide into non- toxic substances.

ISSUE:

Whether the catalytic converter ceramic substrates are classified in heading 6909, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind

used for the conveyance or packing of goods" or heading 8708, HTSUS, which provides for "Parts and accessories of the motor vehicles of heading 8701 to 8705"

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

Heading 8708, HTSUS, provides for: "Parts and accessories of the motor vehicles of headings 8701 to 8705."

Heading 6909, HTSUS, provides for: "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods."

Note 2 to Section XVII, excludes various items from classification as parts and accessories of motor vehicles. It reads in part:

> The expressions "parts" and "parts and accessories" do not apply to the following articles, whether or not they are identifiable as for the goods of this section:
>
> * * *
>
> (e) Machines or apparatus of headings 84.01 to 84.79, or parts thereof; articles of heading 84.81 or 84.82 or, provided they constitute integral parts of engines or motors, articles of heading 84.83;

The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRI. See T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

The criteria set forth in the General Explanatory Notes to Section XVII regarding parts and accessories provide the following:

> It should, however, be noted that these headings apply **only** to those parts or accessories which comply with **all three** of the following conditions:
>
> (a) They must not be excluded by the terms of Note 2 to this Section (see paragraph (A) below).
>
> and (b) They must be suitable for use solely or principally with the articles of Chapters 86 to 88 (see paragraph (B) below).
>
> and (c) They must not be more specifically included elsewhere in the Nomenclature (see paragraph (C) below).
>
> The EN to heading 6909, HTSUS, reads in relevant part:
>
> * * * *
>
> The heading covers in particular:
>
> * * * *

> (2) Ceramic wares for other technical uses, such as pumps, valves ; retorts, vats, chemical baths and other static containers with single or double walls (e.g., for electroplating, acid storage); taps for acids; coils, fractionating or distillation coils and columns, Raschig rings for petroleum fractionating apparatus; grinding apparatus and balls, etc., for grinding mills; thread guides for textile machinery and dies for extruding man-made textiles; plates, sticks, tips and the like, for tools.

The ceramic substrates are suitable for use solely or principally with the motor vehicles of chapter 87, HTSUS. However, Additional U.S. Rule of Interpretation (AUSR) 1(c) provides:

> A provision for parts of an article covers products solely or principally used as a part of such articles, but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory[.]

The commenter argues that insofar as the substrates are suitable for use solely with a motor vehicle and are not excluded by Section XVII Notes 1 through 3, the substrates must be classified in heading 8708. The commenter also argues that heading 6909, HTSUS, does not provide the level of specificity necessary to preclude classification in heading 8708, HTSUS.

At importation, the substrates at issue are clearly identifiable as ceramic articles. However, the substrates also meet the terms of heading 8708. Consequently, in accordance with the EN to Section XVII and AUSRI 1(c), a determination must be made whether heading 8708, HTSUS, is more specific than heading 6909, HTSUS.

Heading 6909, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods" is more specific than heading 8708, HTSUS, which provides for "Parts and accessories of the motor vehicles of headings 8701 to 8705." Heading 6909, HTSUS, most narrowly and definitely describes the ceramic substrate and has the requirements that are the most difficult to satisfy. See Additional U.S. Rule of Interpretation 1(c). Numerous court cases have held that an *eo nomine* designation will prevail over a provision of general description. See Sharp Microelectronics Technology, Inc., v. United States, 122 F.3d 1446 (Sept. 2, 1997). It logically follows, therefore, that a provision which names a good, heading 6909, HTSUS, in this case, must prevail over a heading that provides for parts, but which does not identify any particular article. Accordingly, the ceramic substrates are classified in heading 6909, HTSUS.

Subheading 6909.11, HTSUS, provides for . . . ceramic wares for laboratory, chemical or other technical uses: of porcelain or china.

Subheading 6909.12, HTSUS, provides for . . . . . ceramic wares for laboratory, chemical or other technical uses: articles having a hardness equivalent to 9 or more on the Mohs scale. The Mohs measurement of the subject ceramic substrates is not specified. Therefore, the proper subheading for the ceramic substrates cannot be determined at this time.

HOLDING:

Pursuant to GRI 1 and Additional U.S. Rule of Interpretation 1(c), the catalytic converter ceramic substrates are classified in heading 6909, HTSUS. It is provided for in subheading 6909.11.20, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ce-

ramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Of porcelain or china: Machinery parts" if the ceramic substrate does not have a hardness equivalent to 9 or more on the Mohs scale. The column one, general rate of duty is Free. If the ceramic substrate has a hardness equivalent to 9 or more on the Mohs scale, the applicable subheading is 6909.12.00, HTSUS, which provides for "Ceramic wares for laboratory, chemical or other technical uses; ceramic troughs, tubs and similar receptacles of a kind used in agriculture; ceramic pots, jars and similar articles of a kind used for the conveyance or packing of goods: Ceramic wares for laboratory, chemical or other technical uses: Articles having a hardness equivalent to 9 or more on the Mohs scale." The column one, general rate of duty is 4% *ad valorem*.

EFFECT ON OTHER RULINGS:

HQ 954365, dated September 14, 1993, is hereby revoked.

In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN GREENHOUSE TUNNELS

AGENCY: U.S. Customs and Border Protection; Department of Homeland Security.

ACTION: Revocation of a classification ruling letter and revocation of treatment relating to the classification of certain greenhouse tunnels.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is revoking a ruling letter relating to the classification of a certain greenhouse tunnels. CBP is also modifying or revoking any treatment previously accorded by it to substantially identical merchandise. Notice of the proposed action was published on February 12, 2009, in Volume 43, Number 8, of the Customs Bulletin. CBP received one comment in response to the proposed notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after July 21, 2009.

FOR FURTHER INFORMATION CONTACT: Kelly Herman, Tariff Classification and Marking Branch: (202) 325–0026.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice proposing to revoke one ruling letter pertaining to the classification of certain greenhouse tunnels was published in the February 12, 2009, Customs Bulletin, Volume 43, Number 8. One comment was received in response to the proposed notice.

As stated in the proposed notice, this revocation will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised CBP during the notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, CBP is proposing to modify any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In Headquarters Ruling Letter (HQ) H011657, CBP determined that Visqueen polythene greenhouse tunnels were classifiable in

heading 6306, HTSUS, which provides for "Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:". Since the issuance of that ruling, CBP has reviewed the classification of the greenhouse tunnels and has determined that the cited ruling is in error.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ H011657 and is revoking or modifying any other ruling not specifically identified, to reflect the classification of the greenhouse tunnels according to the analysis contained in HQ H035698, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after publication in the Customs Bulletin.

DATED: May 5, 2009

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H035968
May 5, 2009
CLA–2: OT:RR:CTF:TCM H035968 KSH
CATEGORY: Classification
TARIFF NO.: 3920.10.00; 9817.00.50

GREGORY S. MCCUE, ESQ.
LAURA R. ARDITO, ESQ.
STEPTOE AND JOHNSON LLP
1330 Connecticut Avenue N.W.
Washington, DC 20036–1795

RE: Revocation of HQ H011657, dated April 18, 2008; Classification of greenhouse tunnels.

DEAR MR. MCCUE AND MS. ARDITO:

This is in reply to your correspondence on behalf of your client, Haygrove Inc., dated July 29, 2008, in which you have requested reconsideration of Headquarters Ruling Letter (HQ) H011657, issued on April 18, 2008, concerning the classification of Visqueen polythene greenhouse tunnels under the Harmonized Tariff Schedule of the United States (HTSUS). The greenhouse tunnels were previously classified in HQ H011657, in heading 6306, HTSUS, which provides for "Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:" Samples of the Visqueen polythene coverings have been provided for review.

In your request for reconsideration, you have provided additional information that the greenhouse tunnel coverings are composed entirely of Visqueen polythene. Accordingly, CBP has reviewed the classification of the greenhouse tunnels and has determined that the cited ruling is in error.

HQ H011657 is a Headquarters ruling on Protest 2904–07–100028. In accordance with San Francisco Newspaper Printing Co. v. United States, 9 CIT 517, 620 F. Supp. 738 (1985), the liquidation of the entries covering the merchandise which was the subject of Protest 2904–07–100028 was final on both the protestant and CBP. Therefore, this decision has no effect on those entries.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, notice of the proposed action was published on February 12, 2009, in Volume 43, Number 8 of the Customs Bulletin. CBP received one comment in response to the proposed notice.

FACTS:

> The merchandise was described in HQ H011657 as follows:
>
> The entries at issue are described in the entry documents as "Haygrove multi-bay tunnels for flower and vegetable growing." Protestant has submitted marketing information on Haygrove 3 and 4- Series tunnels to this office.
>
> According to the submitted information, the Haygrove 3-Series is designed for sheltered sites where crops need low cost protection during spring, summer and early autumn. The 3-Series is used for four raised beds of strawberries, summer flowers and high value vegetable crops. Features include:
>
> –frame constructed using 35mm steel
> –bay width from 5.5 m (18 ft.) up to 7.2 m (24 ft.)
> –built on 1.5 m (5 ft.) or 2 m (6.5 ft.) legs
> –Open-end kit strut system enabling full tractor access
> –Wire bracing using top, leg and star wire systems
> –All steel pre-galvanised both outside and inside the steel tube
> –Visqueen polythene, shade net or insect net provided.
>
> The 4-Series is used by growers for five raised beds of strawberries, raspberries, high value flowers, salads, vegetables, ornamentals and nursery stock. Its features are similar to the 3-series but for the width of the bay, the height of the legs and the gauge of the steel.

The greenhouse tunnels use a Visqueen polythene covering which is a polyethylene film. The film is included in the greenhouse tunnel kits as large rolls of 800m in various widths ranging from 8m to 12m. There are no holes or grommets in the rolls. The film is clipped onto the tunnels' steel frames. One of two types of Visqueen polythene are included in the tunnel kits, to wit: (1) High UV Luminance (Luminance THB) and (2) High UV Clear (UVI). Each type is imported in measurements of either 150 or 180 microns (mu). Luminance THB is a thermal heat barrier and a 90% diffusing polythene. UVI is used where crops need rain, hail, wind and frost protection and the grower is not looking to manipulate the photo-spectrum that enters the greenhouse. UV films have specific calibrated levels of UV to enable them to be guaranteed for 3 seasons irrespective of the UV intensity of the geographical area.

ISSUE:

Whether the greenhouse tunnels are classified in heading 3920, HTSUS, as other sheets of plastic, heading 6306, HTSUS, as tents, or heading 7308, HTSUS, as structures of steel.

Whether the greenhouse tunnels are eligible for duty-free treatment into the United States under subheading 9817.00.50, HTSUS.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The 2009 HTSUS provisions at issue are as follows:

3920 Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials:

6306 Tarpaulins, awnings and sunblinds; tents; sails for boats, sailboards or landcraft; camping goods:

7308 Structures (excluding prefabricated buildings of heading 9406) and parts of structures (for example, bridges and bridge sections, lock gates, towers, lattice masts, roofs, roofing frameworks, doors and windows and their frames and thresholds for doors, shutters, balustrades, pillars and columns) of iron or steel; plates, rods, angles, shapes, sections, tubes and the like, prepared for use in structures, of iron or steel:

9817.00.5000 Machinery, equipment and implements to be used for agricultural or horticultural purposes . . . . .

Note 10 to Chapter 39, HTSUS, provides:

> In headings 3920 and 3921, the expression "plates, sheets, film, foil and strip" applies only to plates, sheets, film, foil and strip (other than those of chapter 54) and to blocks of regular geometric shape, whether or not printed or otherwise surface-worked, uncut or cut into rectangles (including squares) but not further worked (even if when so cut they become articles ready for use).

The term "sheets" is not defined in the text of the HTSUS or the Explanatory Notes. When terms are not so defined, they are construed in accordance with their common and commercial meaning. Nippon Kogasku (USA), Inc. v. United States, 69 CCPA 89, 673 F.2d 380 (1982). Common and commercial meaning may be determined by consulting dictionaries, lexicons, scientific authorities and other reliable sources. C.J. Tower & Sons v. United States, 69 CCPA 128, 673 F.2d 1268 (1982).

Webster's Third New International Dictionary (Webster's) (1986) defines "sheeting," in relevant part, as "1: material in the form of sheets or suitable for forming into sheets: as . . . b: material (as a plastic) in the form of a continuous film . . . ." Id. at 2092. Webster's defines "sheet," in relevant part, as "3 a: a broad stretch or surface of something that is usu. thin in comparison

to its length and breadth . . . ." Id. at 2091. The Oxford English Dictionary (2d Ed. 1989) defines "sheet" as "9. a. A relatively thin piece of considerable breadth of a malleable, ductile, or pliable substance." Id. at 224.

The Court of International Trade has also examined the term sheet in various cases. In 3G Mermet Fabric Corp. v. United States, 135 F. Supp. 2d 151, 156 (2001), the Court defined "sheet" as a "material in the form of a continuous stem covering or coating."

In Sarne Handbags Corp. v. United States, 100 F. Supp. 2d 1126, 1134 (2000), the Court defined the term "sheeting" as follows:

> [T]he common meaning of "sheeting" is material in the form of or suitable for forming into a broad surface of something that is unusually thin, or is a material in the form of a continuous thin covering or coating.

Note 1 to Chapter 63 states that "Subchapter 1 applies only to made up articles, of any textile fabric."

> The provisions of heading 9817.00.50 and 9817.00.60 do not apply to:
>
> * * * (e) articles of textile material[.]

As noted in HQ H011657, numerous attempts were made to obtain a swatch of the polyethylene material, however, none were successful. In the absence of evidence to the contrary, it was presumed that the polyethylene was formed from fabric woven from strips not measuring over 5mm in width. Accordingly, the merchandise was not excluded from classification in Section XI as a textile article, or from Chapter 63, HTSUS.

However, in the request for reconsideration, new evidence has been provided that the polyethylene sheeting is not strip. Rather, it is 800m rolls of varying lengths of solid polyethylene sheet. Insofar as the Visqueen polythene is not a textile material, it is excluded from Chapter 63, HTSUS, by Note 1 to Chapter 63, HTSUS.

The Visqueen polythene which is imported in continuous rolls meets the terms of Note 10 to Chapter 39, HTSUS and the definitions of sheet or sheeting as set forth in 3M Mermet Fabric Corp. and Sarne Handbags Corp., *supra*.

One comment was received in opposition to the proposed notice. The commenter contends that the proper classification of the instant merchandise is in heading 8436, HTSUS, as "Other agricultural, horticultural . . . machinery." In the U.S. Court of International Trade ("CIT") case Ludvig Svensson, Inc. v. United States, ("Ludvig Svensson") 62 F. Supp 2d 1171 (C.I.T. 1999), the court found that specialized plastic laminated screens used as greenhouse roofs and imported in rolls several hundred feet long were parts of agricultural machinery. The court had to consider whether these goods in their condition as imported were sufficiently advanced so as to be considered parts of agricultural equipment. In particular, the court noted that the imported goods used as greenhouse roofs were incorporated into shade and heat retention systems, which consisted of screens, drive motors, cables, aluminum and steel supports, brackets, pulleys, fasteners, and support wires. The court noted further, shade and heat retention systems are installed inside almost all commercial greenhouses. Greenhouse manufacturers either produce greenhouses with the shade and heat retention system installed as original equipment or build greenhouses with enough space in the roof area to accommodate such a system. Id. at 1174. The court found "no question

that greenhouses are used in agriculture and that the shade and heat retention systems, which incorporate some of the imported screens . . . are used to regulate and control the environment within a greenhouse." Id. at 1177–78.

As noted in HQ W968283, dated May 9, 2007, the Ludvig Svensson decision is not applicable to all types of greenhouse film. In Ludvig Svensson, the court was provided with evidence that the screens used as greenhouse roofs were incorporated into shade and heat retention systems, i.e., "systems consist[ing] of the screens along with drive motors, cables, aluminum and steel supports, brackets, pulleys, fasteners, and support wires." Ludvig Svensson at 1174. Based on this evidence the court classified the screens in heading 8436, HTSUS, as parts of agricultural machinery. Consequently, CBP will only classify greenhouse film in heading 8436, HTSUS, if it is presented with evidence that greenhouse film is incorporated into agricultural machinery. Cf. NY J84551, dated June 3, 2003, in which polypropylene fabric used as ground cover was precluded from classification in heading 8436, HTSUS, partly because it was not attached to machinery, did not form part of a heat retention system and was not used for any similar purpose. See also NY N036721, dated September 10, 2008.

In this case, there is no evidence that the merchandise at issue is used in mechanized agricultural systems similar to that described in Ludvig Svensson. As such, the greenhouse tunnels are not classifiable in heading 8436, HTSUS.

The greenhouse tunnels are prima facie classifiable in two headings, each of which describes part only of the good. Under GRI 3(a), each heading is deemed to be equally specific. Under GRI 3(b), the greenhouse tunnels are composite goods made up of different materials and/or components which are to be classified as if consisting only of that material or component which imparts the essential character to the whole. The Visqueen polythene covering is classified in heading 3920, HTSUS and the steel frame in heading 7308, HTSUS.

In essential character determinations, CBP may consider the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the good. Other factors may be considered relevant, depending on the particular merchandise. In this case, the steel frame predominates by weight. In addition, the steel provides strength and support to the greenhouse tunnels and gives form and shape to them. However, the nature of the Visqueen polythene covering and its role in relation to the use of the greenhouse tunnels are equally compelling factors. Considering bulk or size, the covering clearly predominates over the steel frame. More importantly, however, the greenhouse tunnels are designed to provide low cost protection for crops. This is how it is marketed and why users purchase it. The Visqueen polythene covering is the component that affords crops protection from inclement weather. For these reasons, we conclude that in this case it is the Visqueen polythene covering whose role is critical and which imparts the essential character to the greenhouse tunnels. Accordingly, the greenhouse tunnels are classified in heading 3920, HTSUS.

The tariff provision for machinery, equipment and implements to be used for agricultural or horticultural purposes, subheading 9817.00.50, HTSUS, is an actual use provision. See HQ 083930, dated May 19, 1989. In order for this machinery to fall within the special provisions of Chapter 98, HTSUSA, the following three-part test must be met:

(1) The article in question must not be excluded from the heading under Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2, HTSUSA.

(2) The terms of the headings must be met in accordance with GRI 1, HTSUSA, which provides that classification is determined according to the terms of the headings and any relative section or chapter notes.

(3) The article must comply with the actual use provision requirements of sections 10.131–10.139, Customs Regulations (19 CFR 10.131–10.139).

As stated, the greenhouse tunnels are provided for under heading 3920, HTSUS. This heading is not excluded from classification in heading 9817.00.50, HTSUS, by operation of Section XXII, Chapter 98, Subchapter XVII, U.S. Note 2.

The second part of the test requires the greenhouse tunnels to be "machinery", "equipment" or "implements" used for "agricultural or horticultural purposes". As such, the initial determination to be made is what agricultural or horticultural pursuit is in question. The greenhouse tunnels assist in cultivating fruits, vegetables and flowers in a controlled environment. This is an agricultural pursuit.

The third part of the test is that importers meet the actual use requirements of section 10.131 through 10.139, CBP Regulations [19 CFR 10.131 through 10.139]. If these requirements are satisfied, the third part of the test will be met and the subject merchandise will qualify for duty-free entry as agricultural or horticultural equipment, under Chapter 98, HTSUS.

HOLDING:

By application of GRI 3, the Series 3 and Series 4 Haygrove Tunnel systems are classified in heading 3920, HTSUS. They are specifically provided for in subheading 3920.10.00, HTSUS, which provides for "Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other material: of polymers of ethylene." The column one, general rate of duty is 4.2% *ad valorem*. The greenhouse tunnels are eligible for duty- free treatment under heading 9817.00.50, HTSUS, provided the actual use requirements of section 10.131–10.139, CBP Regulations [19 CFR 10.131–10.139], are satisfied.

EFFECT ON OTHER RULINGS:

HQ H011657, dated April 18, 2008, is revoked.

In accordance with 19 U.S.C. 1625 (c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

PROPOSED REVOCATION OF A RULING LETTER AND PROPOSED REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF TUMBLED SEMI-PRECIOUS GEMSTONES

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of "tumbled" semi-precious gemstones.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. § 1625 (c)), this notice advises interested parties that U.S. Customs and Border Protection ("CBP") is proposing to revoke a ruling letter relating to the tariff classification of tumbled semi-precious gemstones under the Harmonized Tariff Schedule of the United States ("HTSUS"). CBP also proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before June 21, 2009.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations and Rulings, Attention: Commercial Trade and Regulations Branch, 799 9th St., N.W., 5th Floor, Washington, D.C., 20229–1179. Submitted comments may be inspected at U.S. Customs and Border Protection, 799 9th Street N.W., Washington, D.C., 20229, during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: Richard Mojica, Tariff Classification and Marking Branch, at (202) 325–0032.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI ("Customs Modernization") of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI") became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with customs laws and regulations, the trade community needs to be clearly and completely informed of its legal

obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. § 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. § 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of tumbled semi-precious gemstones. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter ("HQ") 951866, dated August 21, 1992 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. §1625(c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

In HQ 951866, CBP classified certain tumbled semi-precious gemstones in heading 7103, specifically in subheading 7103.99.10, HTSUS, as "[S]emi-precious stones, whether or not worked or graded but not strung, mounted or set . . . : Otherwise worked: Other: Cut but not set, and suitable for use in the manufacture of jewelry." We have reviewed HQ 951866 and determined that the classification set forth in that ruling is incorrect. It is now CBP's position that the subject gemstones are properly classified in subheading 7103.99.50, as "[S]emi-precious stones whether or not worked or graded but not strung, mounted or set . . . : Otherwise worked: Other: Other."

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ 951866, dated August 21, 1992, and any other ruling not specifically identified, to reflect the proper classification of the tumbled semi-precious gemstones according to the analysis contained in the proposed HQ H023364, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: May 5, 2009

Gail A. Hamill for MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ 951866
August 21, 1992
CLA–2 CO:R:C:M 951866 NLP
CATEGORY: Classification
TARIFF NO.: 7103.99.10

DISTRICT DIRECTOR
UNITED STATES CUSTOMS SERVICE
40 South Gay Street
Baltimore, MD 21202

RE: Protest No. 1303–92–100061; tumbled semi-precious gemstones; semi-precious gemstones that are otherwise worked than simply sawn or roughly shaped; subheading 7103.10.40; Explanatory Note 71.03; Gem Cutting: A Lapidary's Manual

DEAR SIR:

The following is our decision regarding the Protest and Request for Further Review No. 1303–92–100061, dated March 12, 1992. At issue is the classification of tumbled semi-precious gemstones under the Harmonized Tariff Schedule of the United States (HTSUS).

FACTS:

The articles at issue are the following semi-precious gemstones: banded amethyst, rose quartz, leopard skin, jasper and rock crystal B. The rough gemstones are shoveled into 2-1/5 ton tumblers with abrasives and water. The tumblers are turned over and over and the stones slide and rub against each other for many weeks until they are perfectly smooth. Tumbling gives

the stones a slick and shiny surface. Upon importation, the gemstones are not set. Once imported, the stones will be used to manufacture various articles of jewelry such as, bracelets, necklaces and earrings.

Upon liquidation, the semi-precious gemstones were classified in subheading 7103.10.40, HTSUS, which provides for "[p]recious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi- precious stones, temporarily strung for convenience of transport:

[u]nworked or simply sawn or roughly shaped: [o]ther." The rate of duty for articles that fall within this subheading is 21% ad valorem.

The protestant contends that the semi-precious gemstones are classified in subheading 7103.99.10, HTSUS, which provides for "[p]recious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi- precious stones, temporarily strung for convenience of transport: [o]therwise worked: [o]ther: [c]ut but not set, and suitable for use in the manufacture of jewelry." The rate of duty for articles that fall within this subheading is 2.1% ad valorem.

ISSUE:

Are the tumbled semi-precious gemstones classified as "roughly shaped" in subheading 7103.10.40, HTSUS, or as stones that are "otherwise worked" in subheading 7103.99.10, HTSUS?

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (GRI's). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes.

Heading 7103, HTSUS, provides for "[p]recious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport." Explanatory Note (EN) 71.03 of the Harmonized Commodity Description and Coding System, page 953, states that "[t]he provisions of the second paragraph of the Explanatory Note to heading 71.02 apply, mutatis mutandis, to this heading." EN 71.02 states on page 952 that heading 7102, HTSUS, "covers unworked stones, and stones worked, e.g., by cleaving, sawing, bruting, faceting, grinding, polishing, drilling, engraving (including cameos, and intaglios), preparing as doublets, provided they are neither set nor mounted."

Unworked semi-precious stones of subheading 7103.10.20, HTSUS, are stones that are unworked and are in the same condition as when they were mined from the earth. The "other" semi- precious stones of subheading 7103.10.40, HTSUS, are stones that have been "simply sawn or roughly shaped". Articles that have been further worked than simply sawn or roughly shaped are classified in subheading 7103.99, HTSUS.

The protestant argues that tumbled semi-precious gemstones are considered cut stones and are more than "roughly shaped". In addition, the stones are not set and in their condition as imported they are suitable for the

manufacture of jewelry items such as bracelets, earrings and necklaces. Therefore, these stones are considered "otherwise worked" and they should be classified in subheading 7103.99.10, HTSUS.

Tumbling is a method of mass producing gems by placing rough pieces of gem material in a barrel, adding abrasives and water, and turning the barrel over and over until the stones are perfectly smooth. As a result of this process, the gemstones are cut into different shapes and are suitable for use in the manufacture of jewelry. See, Gem Cutting: A Lapidary's Manual, by John Sinkarkas, 2nd Ed. 1962, Van Nostrand Reinhold Company, p. 187. It is our position that gemstones that are shaped by tumbling are more than "roughly shaped" and would be considered "otherwise worked" for HTSUS purposes. As the subject semi- precious gemstones are tumbled, not set and suitable for use in the manufacture of jewelry, they would be classified in subheading 7103.99.10, HTSUS.

HOLDING:

The protest should be allowed in full. A copy of this decision should be attached to the Customs Form 19 and provided to the protestant as part of the notice of action on the protest.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H023364
CLA–2 OT:RR:CTF:TCM H023364 RM
CATEGORY: Classification
TARIFF NO.: 103.99.50

MS. KATHY PAZDZIORKO
SQUIRE BOONE VILLAGE
P.O. Box 411
Corydon, IN 47112

RE: Revocation of Headquarters Ruling Letter 951866; Classification of Tumbled Semi-Precious Gemstones

DEAR MS. PAZDZIORKO:

This is in reference to Headquarters Ruling Letter ("HQ") 951866 issued on August 21, 1992, in response to an Application for Further Review ("AFR") of a Protest filed by your company, regarding the classification of tumbled semi-precious gemstones. In that ruling, U.S. Customs and Border Protection ("CBP") classified the merchandise in heading 7103, specifically in subheading 7103.99.10, Harmonized Tariff Schedule of the United States ("HTSUS"), as "[S]emi-precious stones . . : otherwise worked: other: cut but not set, and suitable for use in the manufacture of jewelry." We have reviewed HQ 951866 and found it to be incorrect.

We note that pursuant to San Francisco Newspaper Printing Co. v. United States, 620 F. Supp. 738 (Ct. Int'l Trade 1985), the decision on the merchandise which was the subject of Protest No. 1303–92–100061 is final on both the Protestant and CBP. Therefore, while we may review the law and analysis of HQ 951866, any decision taken herein does not impact the entries subject to that ruling.

FACTS:

In HQ 951866, CBP described the merchandise as follows:

> The articles at issue are the following semi-precious gemstones: banded amethyst rose quartz, leopard skin, jasper and rock crystal B. The rough gemstones are shoveled into 2⅕ ton tumblers with abrasives and water. The tumblers are turned over and over and the stones slide and rub against each other for many weeks until they are perfectly smooth. Tumbling gives the stones a slick and shiny surface. Upon importation, the gemstones are not set. Once imported, the stones will be used to manufacture various articles of jewelry such as, bracelets, necklaces and earrings.

Relying on the common meaning of the term "tumbling," we concluded that the subject gemstones were "tumbled" and thereby "otherwise worked" and "cut but not set" for tariff purposes.[15] Our determination in that ruling is incorrect, however, because we erroneously used the term "tumbled" interchangeably with the term "cut." In fact, the subject stones were tumbled, but not cut.

ISSUE:

Whether the tumbled semi-precious gemstones are "cut but not set."

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs 2 through 6 may then be applied in order.

The HTSUS provisions under consideration are as follows:

7103	Precious stones (other than diamonds) and semi-precious stones, whether or not worked or graded but not strung, mounted or set; ungraded precious stones (other than diamonds) and semi-precious stones, temporarily strung for convenience of transport:
	Otherwise worked:
7103.99	Other:

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[15] The term "tumbling" refers to "a method of mass producing gems by placing rough pieces of gem material in a barrel, adding abrasives and water, and turning the barrel over and over until the stones are perfectly smooth. As a result of the process, the gemstones are cut into different shapes and are suitable for use in the manufacture of jewelry." (Gem Cutting: A Lapidary's Manual, by John Sinkarkas, 2nd. ed. 1962, Van Nostrand Reinhold Company, pg. 187).

7103.99.10	Cut but not set, and suitable for use in the manufacture of jewelry . . .
7103.99.50	Other . . .

It is undisputed in this case that the merchandise consists of "semi-precious stones" according to the terms of heading 7103, HTSUS, and that they are "otherwise worked," *i.e.*, worked in a manner other than "simply sawn or roughly shaped," as required by the terms of subheading 7103.99, HTSUS. At issue is the classification of the stones at the 8-digit level, specifically, whether the stones are "cut but not set."

In HQ H012548, dated February 12, 2008, CBP addressed the definition of the term "cut but not set" as it pertains to subheading 7013.99.10, HTSUS. After consulting several technical sources, we found that the terms "cutting"[16] and "polishing"[17] describe two different processes in gem manufacturing and are not interchangeable.[18] In that ruling, we concluded that the process of "cutting" creates new facets and angled surfaces on the gemstone, whereas the process of "polishing" simply smoothens and brightens its surface. We also found that "a setting provides a mount or base which holds a stone in place and is part of the jewelry itself. A setting may be either per-

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[16] The term "cut" is used interchangeably with the terms "fashioning," "girdling" and "bruting." In HQ H012548 we defined those terms as follows:

> Cutting: The process of the cutting or sawing, grinding . . . faceting of precious stones or other materials to improve its brilliancy on revolving diamond charged grinding wheels. After cutting, it normally has a symmetrical shape which is sometimes in cabochon. Also called fashioning. (Dictionary of Gems and Gemology. 2nd ed. Germany: Springer, 2005. ISBN: 3–540–23970–7); See Fashioning (The GIA Diamond Dictionary, 3rd ed. Santa Monica, CA: Gemological Institute of America, 1993. ISBN: 0–87311–026–9); See Girdling (Jewelers' Dictionary. 3rd ed. Radnor, PA: Jewelers' Circular-Keystone, 1976. ISBN: 0–931744–01–6);
>
> Fashioning: (1) General term used to describe the entire process of manufacturing a polished diamond from the rough, including design, cleaving, sawing, bruting, and polishing; also called cutting. (2) industry term for bruting (The GIA Diamond Dictionary. 3rd ed. Santa Monica, CA: Gemological Institute of America, 1993. ISBN: 0–87311–026–9); General name for sawing, cleaving, rounding up, faceting . . . of manufacturing of diamonds and other gemstones (Dictionary of Gems and Gemology. 2nd ed. Germany: Springer, 2005. ISBN: 3–540–23970–7)
>
> Girdling: The process by which round diamonds are given their circular or fancy shape, also known as cutting, bruting or rounding (Jewelers' Dictionary. 3rd ed. Radnor, PA: Jewelers' Circular-Keystone, 1976. ISBN: 0–931744–01–6).

[17] In HQ H012548 we defined the term "polishing" as "the final process after placing the facets on the gemstone, which has been rubbed with various abrasives to smooth and brighten the surface. The final polishing by machine is used to achieve a lustrous surface." (Dictionary of Gems and Gemology. 2nd ed. Germany: Springer, 2005. ISBN: 3–540–23970–7).

[18] The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") to heading 71.02 suggest that polishing and cutting are distinct manufacturing processes by referring to "bruting" (a synonym for cutting), and "polishing," as two separate treatments. The ENs constitute the official interpretation of the Harmonized System at the international level. While not legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

manent or temporary." See also HQ 959831 and HQ 959687, both dated April 1, 1997.

As stated in the facts section above, the stones at issue were "tumbled," which is one of two different methods of polishing gems (abrasive polishing is the other). See NY N018792, dated November 8, 2007. However, they were not "cut." As such, they are precluded from classification in subheading 7103.99.10, HTSUS.

HOLDING:

By application of GRI 1, the tumbled semi-precious gemstones are classified in heading 7103, specifically in subheading 7103.99.50, HTSUS, which provides for: "[S]emi-precious stones whether or not worked or graded but not strung, mounted or set . . . : Otherwise worked: Other: Other." The column one, general rate of duty is 10.5 percent *ad valorem*.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the Internet at www.usitc.gov/tata/hts/.

EFFECT ON OTHER RULINGS:

This ruling revokes HQ 951866, dated August 21, 1992.

MYLES B. HARMON,
Director,
Commercial and Trade Facilitation Division.