

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 ADMISSIBILITY 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

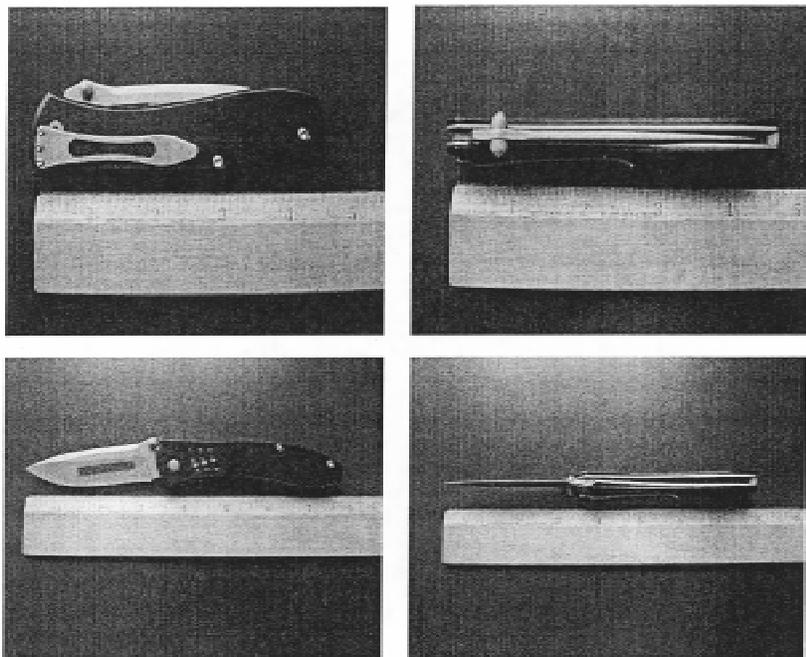
DEAR MS. AUSTRINS AND MR. O'DONNELL:

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.

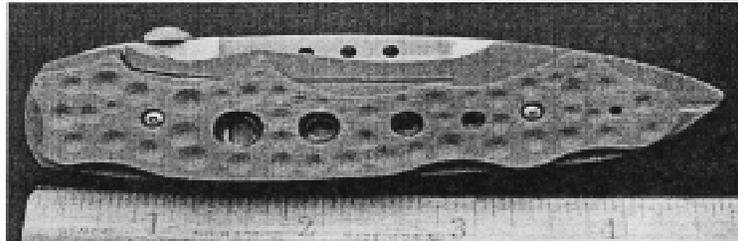
FACTS:

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/thumb screw (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.

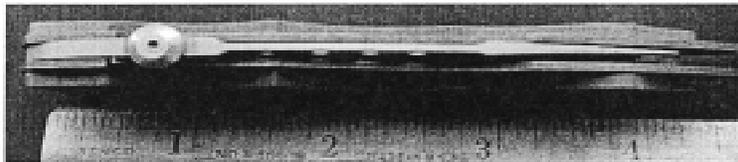
You contend that there are prior rulings which determined that knives with similar spring-assisted opening mechanisms are admissible pursuant to the Switchblade Knife Act, 15 U.S.C. §§ 1241-1245 and the implementing Customs and Border Protection ("CBP") Regulations set forth at 19 CFR §§ 12.95-12.103. 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.

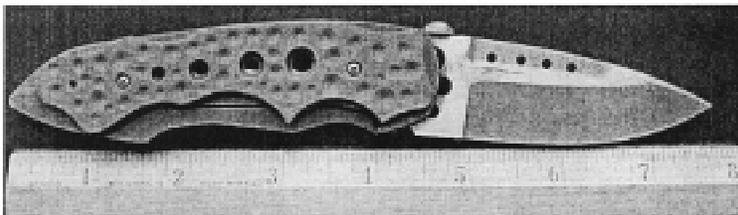
Images of the VanHoy Assist:



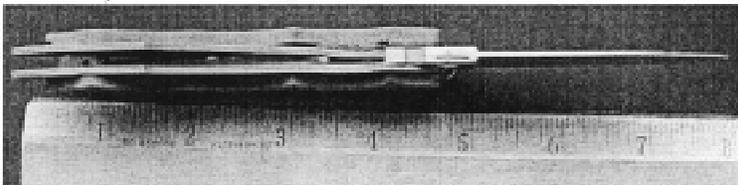
Side view



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

¹Effective 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 ⅜ 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)* [italized 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,

²The 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 meanings³. 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

³A 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:

⁴See 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 ambidextrous 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.

⁵The 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 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 meanings⁶. The

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 hand⁸, 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-

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

⁹The 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 meanings¹⁰. 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.”

¹⁰A 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. 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.

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 H032255¹¹ 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

¹¹In 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 $4\frac{5}{8}$ inches when closed. When extended, the overall length of the knife is approximately $7\frac{5}{8}$ 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)* [italized 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

sued. 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

¹²The 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 meanings¹³. 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

¹³A 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.