

Bureau of Customs and Border Protection

General Notices

General Program Test Extended: Quota Preprocessing

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

ACTION: General notice.

SUMMARY: With this notice, the Bureau of Customs and Border Protection (CBP) announces that the duration of the quota preprocessing program test, which provides for the electronic processing of certain quota-class apparel merchandise prior to arrival of the importing carrier, is extended until December 31, 2006. The quota preprocessing program test is currently being conducted at all CBP ports and was set to expire on December 31, 2004. The duration of the test is being extended so that CBP can continue to evaluate the program's effectiveness. Public comments concerning any aspect of the program test as well as applications to participate in the test are requested.

DATES: The program test is extended to run until December 31, 2006. Applications to participate in the test and comments concerning the test will continue to be accepted throughout the testing period. Should the test be adopted as a permanent program under the CBP regulations through rulemaking, notification terminating the test will be issued.

ADDRESSES: Written comments regarding this notice or any aspect of the program test should be addressed to Christine DeRiso, Quota Enforcement and Administration, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 5.3-D, Washington, DC 20229, or may be sent via e-mail to Quota_HQ@dhs.gov. An application to participate in the program test must be sent to the CBP port(s) (Attention: Program Coordinator for Quota Preprocessing) where the applicant intends to submit quota entries for preprocessing. Information on CBP port addresses may be obtained by contacting the CBP Web site at <http://www.CBP.gov> (Office Locations).

FOR FURTHER INFORMATION CONTACT: Christine DeRiso, Quota Enforcement and Administration (202-344-2319).

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1998, the Bureau of Customs and Border Protection (CBP) published a general notice in the **Federal Register** (63 FR 39929) announcing the limited testing of a new operational procedure regarding the electronic processing of quota-class apparel merchandise. The test, authorized under § 101.9(a), CBP Regulations (19 CFR 101.9(a)), was commenced on September 15, 1998, at the ports of New York/Newark and Los Angeles. Quota preprocessing allows certain quota entries (merchandise classifiable in chapter 61 or 62 of the Harmonized Tariff Schedule of the United States (HTSUS)) to be filed, reviewed for admissibility, and to have their quota priority and status determined by CBP prior to arrival of the carrier, similar to the method of preliminary review by which non-quota entries are currently processed. The purpose of quota preprocessing is to reduce CBP processing time for qualified quota entries and to expedite the release of the subject merchandise to the importer. To this end, participants in the quota preprocessing test have been allowed to submit quota entries to CBP up to 5 days prior to vessel arrival or after the wheels are up on air shipments. The July 24, 1998, **Federal Register** notice described the new procedure, specified the eligibility and application requirements for participation in the program test, and noted the acts of misconduct for which a participant in the test could be suspended and disqualified from continued participation in the program. The test was scheduled to continue for a six-month period that expired on March 14, 1999.

On March 25, 1999, January 6, 2000, and November 30, 2000, CBP published general notices in the **Federal Register** (64 FR 14499, 65 FR 806, and 65 FR 71356, respectively) that extended the program test through December 31, 2002. These extensions of the test procedure were undertaken so that CBP could further evaluate the effectiveness of the program and determine whether the program test should be expanded to other ports. By a notice published in the **Federal Register** (66 FR 66018) on December 21, 2001, the test was expanded to a selected number of additional ports in order to enable CBP to continue to study the program's effectiveness and determine whether the program should be established nationwide on a permanent basis through appropriate amendments to the CBP Regulations. The additional ports selected to participate in the expanded program test were: Atlanta; Boston seaport; Logan Airport, Boston; Buffalo-Niagara Falls; Champlain-Rouses Point; Chicago; Columbus; Memphis; Miami; Miami International Airport; Newport/

Portland, Oregon (the area port of Portland); Puget Sound (the ports of Seattle and Seattle/Tacoma International Airport); San Francisco seaport; and San Francisco International Airport. The expansion of the test to these ports was determined by the volume of quota lines of apparel merchandise entered at these ports. Because two of the additional ports selected to participate in the program test received shipments by land (Buffalo-Niagara Falls and Champlain-Rouses Point), CBP allowed quota entries in these circumstances to be presented to CBP after the carrier departed from its location in Canada destined for the U.S. border. Finally, by a notice published in the **Federal Register** (67 FR 57271) on September 9, 2002, CBP expanded the test to all CBP ports effective as of October 9, 2002, and extended the duration of the program test until December 31, 2004.

The duration of the test is now being further extended so that CBP can continue to evaluate the program's effectiveness.

Prospective applicants may consult the December 21, 2001, and July 24, 1998, **Federal Register** notices for a more detailed discussion of the quota preprocessing program and the September 9, 2002, **Federal Register** notice for eligibility criteria.

Application Process; Additional Ports; Misconduct

An importer wishing to participate in the quota preprocessing test must submit a written application to the attention of the Program Coordinator for Quota Preprocessing at each port where the applicant intends to submit quota entries for preprocessing. Information on CBP port addresses may be obtained by contacting the CBP Web site at <http://www.CBP.gov> (Office Locations).

The application must include the following information: (1) The specific port(s) included under the program where entries of the quota merchandise are intended to be made; (2) the importer of record number(s), including suffix(es), and a statement of the importer's/filer's electronic filing capabilities; and (3) names and addresses of any entry filers, including CBP brokers, who will be electronically filing entries at each port under the program on behalf of the importer/participant. Applicants will be notified in writing of their selection or nonselection to participate in the test. An applicant denied participation may appeal in writing to the port director at the port where the application was denied. Application requirements are set forth in the September 9, 2002, **Federal Register** notice.

Current participants in quota preprocessing that also wish to file entries under the program at any additional ports must notify, in writing, the additional port(s) at least 5 working days before submitting entries at such port(s). Also, for those that are selected to participate in the test, the July 24, 1998, **Federal Register** notice should be consulted regarding the acts of misconduct that may result

in a participant being suspended from the program and how a participant may appeal a proposed suspension from the program.

Dated: January 4, 2005

WILLIAM S. HEFFELFINGER III,
*Assistant Commissioner,
Office of Field Operations.*

[Published in the Federal Register, January 10, 2005 (70 FR 1732)]

Modification of the National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: General notice.

SUMMARY: This document modifies the Customs and Border Protection Automated Commercial System Reconciliation prototype test by changing the requirement for filing the Reconciliation entry from no later than 15 months to no later than 21 months after the date the importer declares its intent to file the Reconciliation. This change does not apply to Reconciliation entries covering NAFTA or US-CFTA claims. Other than this modification, the test remains the same as set forth in previously published **Federal Register** notices.

DATES: The test modification set forth in this document is effective on February 9, 2005. The two-year testing period of this Reconciliation prototype commenced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in the test will be accepted throughout the duration of the test.

ADDRESSES: Written inquiries regarding participation in the Reconciliation prototype test and/or applications to participate should be addressed to Mr. Richard Wallio, Reconciliation Team, Bureau of Customs and Border Protection, 1300 Pennsylvania Ave. NW, Room 5.2A, Washington, D.C. 20229-0001. Inquiries regarding the test may be made by accessing Recon.Help@dhs.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wallio at (202) 344-2556.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Initially, it is noted that on November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Pub.

L. 107–296 (the HS Act), establishing the Department of Homeland Security and, under section 403(1) (6 U.S.C. 203(1)), transferring the U.S. Customs Service, including functions of the Secretary of the Treasury relating to the Customs Service, to the new department, effective on March 1, 2003. Also, under the HS Act and the Reorganization Plan Modification for the Department of Homeland Security that was signed on January 30, 2003, the U.S. Customs Service was renamed the Bureau of Customs and Border Protection (CBP). The agency will be referred to by that name in this document, unless reference to the Customs Service (or Customs) is appropriate in a given context.

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057 (December 8, 1993)), is currently being tested by CBP under the CBP Automated Commercial System (ACS) Prototype Test. Customs initially announced and explained the test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in seven subsequent **Federal Register** notices: 63 FR 44303, published on August 18, 1998; 64 FR 39187, published on July 21, 1999; 64 FR 73121, published on December 29, 1999; 66 FR 14619, published on March 13, 2001, 67 FR 61200, published on September 27, 2002, 67 FR 68238, published on November 8, 2002, and 69 FR 73730, published on September 2, 2004. A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely.

For application requirements, see the **Federal Register** notices published on February 6, 1998, and August 18, 1998. For additional information regarding the test, see http://www.customs.gov/xp/cgov/import/cargo_summary/.

Reconciliation generally

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic “flag” which is placed on the entry summary at the time the entry summary is filed. The issues for which an entry summary may be “flagged” (for the purpose of later reconciliation) are limited and relate to: (1) value issues; (2) classification issues, on a limited basis; (3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS; 9802 issues); and (4) post-entry claims under 19 U.S.C. 1520(d) for the benefits of the North American Free Trade Agreement (NAFTA) or the United

States - Chile Free Trade Agreement (US-CFTA) for merchandise as to which such claims were not made at the time of entry.

The flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date relative to the flagged issues is through the filing of a Reconciliation entry. Thus, the flagging of an entry summary constitutes the importer's declaration of intent to file a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (The Reconciliation test procedure for making post-entry NAFTA claims, also applicable to US-CFTA claims, is explained in the February 6, 1998, and December 29, 1999, **Federal Register** notices.)

TEST MODIFICATION

On December 3, 2004, the Miscellaneous Trade and Technical Corrections Act of 2004 (the Act; Pub. L. 108-429) was signed into law. Section 2101 of the Act amended 19 U.S.C. 1484(b)(1) to change the requirement for filing a Reconciliation entry from not later than 15 months to not later than 21 months after the date the importer declares its intent to file the Reconciliation (date the entry summary is flagged which is the date of its filing). Based on this change, CBP is modifying the ACS Reconciliation prototype test by changing the requirement for filing the Reconciliation entry, except those covering NAFTA or US-CFTA issues, from no later than 15 months to no later than 21 months after the date the importer declares its intent to file the Reconciliation. All other aspects of the test remain the same.

The change to the test announced in this document is effective 30 days after the date this notice is published in the **Federal Register**. Thus, under the test, on and after the effective date, Reconciliation entries covering most Reconciliation issues (those having to do with value, classification, or 9802 issues) must be filed as follows: (1) If the dates of entry relative to the flagged entry summaries covered by the Reconciliation entry fall on or after the effective date of this change, the Reconciliation entry must be filed no later than 21 months after the oldest entry summary date; (2) if the dates of entry relative to the flagged entry summaries covered predate the effective date, the Reconciliation entry must be filed no later than 15 months after the oldest entry summary date; and (3) where the dates of entry relative to the flagged entry summaries covered are a mixture of (1) and (2) above, the Reconciliation entry must be filed no later than 15 months after the oldest entry summary date. (CBP notes that the entry summary date for a given entry of merchandise is always either the same as or later than the entry date.)

The filing of Reconciliation entries for 520(d) Reconciliation (relative to NAFTA and US-CFTA claims) is still required no later than

12 months after the oldest date of entry (date of import) applicable to the flagged entry summaries covered. This requirement has not changed.

Dated: January 4, 2005

JAYSON P. AHERN,
Assistant Commissioner,
Office of Field Operations.

[Published in the Federal Register, January 10, 2005 (70 FR 1730)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.
Washington, DC, January 12, 2005

The following documents of the Bureau of 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.

MICHAEL T. SCHMITZ,
*Assistant Commissioner,
Office of Regulations and Rulings.*

PROPOSED MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE ENTRY OF CERTAIN KNIVES

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

ACTION: Notice of proposed modification of ruling letter and revocation of treatment relating to the entry of certain knives.

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 Customs and Border Protection ("CBP") intends to modify a ruling letter pertaining to the entry of certain knives. CBP also intends to revoke any treatment previously accorded by CBP to the same merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before February 25, 2005.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at 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 at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, Entry Procedures and Carriers Branch, (202) 572-8730.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on CBP to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and CBP share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and 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, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that CBP intends to modify a ruling letter pertaining to the entry of certain knives. Although in this notice CBP is specifically referring to one ruling, HQ 116315, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the same merchandise which is subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), CBP intends to revoke any treatment previously accorded by CBP to transactions involving the same merchandise. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party or CBP personnel applying a ruling of a third party to importations of the same merchandise. Any person involved in such transactions

should advise CBP during this notice period. An importer's failure to advise CBP of such transactions or of a specific ruling with respect to the same merchandise 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 notice of this proposed action.

In HQ 116229, dated July 8, 2004, set forth as Attachment A to this document, CBP 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 (15 U.S.C. 1241–1245). 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).

It is now CBP's position that the knives are permitted unrestricted entry into the U.S. pursuant to 19 CFR 12.96(a) because they are not switchblades within the meaning of 19 CFR 12.95(a)(1) and because they have a utilitarian use pursuant to 19 CFR 12.95(c). Proposed HQ 116315, modifying HQ 116229, is set forth as Attachment B to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify HQ 116315 in order to reflect that the subject knives are permitted to unrestricted entry into the U.S. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to the same merchandise. Before taking this action, we will give consideration to any written comments timely received.

DATED: January 11, 2005

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 116229
July 8, 2004
RES-2-23-RR: IT: EC 116229
CATEGORY: Restricted Merchandise

THOMAS M. KEATING, ESQ.
HODES KEATING & PILON
39 South La Salle Street, Suite 1020
Chicago, IL 60603-1731

RE: Switchblade Knives; 15 I.J.S.C. §§ 1241-1245

DEAR MR. KEATING:

This is in response to your letter dated March 11, 2004, enclosing two sample knives and schematic thereof, requesting a ruling as to their admissibility on behalf of your client, Fiskars Brands Inc. ("Fiskars"). Your letter was forwarded to us by the Chief, Metals and Machinery Branch, National Commodity Specialist Division, U.S. Customs and Border Protection (CBP), New York. Our ruling is set forth below.

FACTS:

Fiskars would like to import spring assisted Gerber knives: a serrated blade version, part number 22-07161 (attached as Sample A) and a fine edge version, part number 22-07162 (attached as Sample B). The knives are made of metal and each includes a pocket clip on the side of the handle. The knives have the visual appearance of jackknives or pocketknives. The knives measure 4¼ inches long when closed. When extended the blade of each knife measures 3 inches total. Sample A has a serrated section measuring 1¼ inches. Sample B has a fine edge, rather than a serrated section. The overall length of the knives, when extended is 7¼ inches. There is a 3/16-inch thumb stud on each side of the unsharpened edge near the base of the blades used for pulling the blades open. The blades have 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 safety device does not act to open or close the knife. The knives also have a lock mechanism that must be released to close the blades once they are open.

The knives incorporate a spring capable of two functions. The spring holds the blade closed and safely inside the handle. In this first condition, the blade is not cocked to open under the spring pressure. There is no button or lever in the handle that can trigger the blade to open. After the knife is rotated approximately 10 degrees out of the handle by thumb force applied to the blade thumb stud, the spring changes orientation and drives the blade into the open position without further assistance. In the open position a lock is then triggered which holds the blade safely in place while the knife is used. Upon manually closing the knife blade, the spring returns to its beginning position, which keeps the blade inside the handle.

ISSUE:

Whether the knife samples submitted for our review 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 Regulations promulgated pursuant to the Switchblade Knife Act are set forth in 19 CFR §§ 12.95-12.103. In this regard we note that a switchblade knife is defined, in pertinent part, as follows:

§ 12.95 Definitions.

- (a) *Switchblade knife*. . . any 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. (Emphasis added)

With respect to the sample knives forwarded for our review, upon examining them it is readily apparent that both blades are detachable, and the blades are spring-assisted. The exertion of pressure against the knob protruding from the base of the blade thereby pushing it from its closed position activates a spring mechanism, which automatically propels the blade into a fully open position. A knife such as this 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.) This conclusion is directly in line with previous CBP decisions which held similar knives could not be imported. In HQ 115725, dated July 22, 2002 and HQ 115713, dated July 29, 2002, CBP held that knives which can be opened by the application of a thumb to a stud on the blade which activates a spring mechanism propelling the blade into a fully opened and locked position were in violation of the Switchblade Knife Act. You cite to HQ 114990, dated March 24, 2000, in which CBP found one style of knife not to be in violation of the Switchblade Knife Act. You state the subject knives are similar to the nonviolative knife in HQ 114990. However, the knife in HQ 114990 *was not spring assisted*. The subject knives *are spring assisted* and more closely resemble the violative knives discussed in HQ 115725 and HQ 115713.

The subject knives are not among those listed in § 12.98, Customs Regulations (19 CFR § 12.98) the importation of which is statutorily excepted. Consequently, pursuant to section 12.97, Customs Regulations (19 CFR § 12.97), the importation of these knives would be contrary to law and subject to forfeiture under 19 U.S.C. § 1595a(c).

HOLDING:

The sample knives submitted for our review are switchblades and are therefore prohibited entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245). As such, the sample knives will not be returned to you.

GLEN E. VEREB,
Chief,
Entry Procedures and Carriers Branch.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,

HQ 116315
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”). You made an additional submission of December 14, 2004 and participated in a telephone conference on October 29, 2004.

FACTS:

You request reconsideration of HQ 116229, dated July 8, 2004, 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 at-

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

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 "Bali-song", "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 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.

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