

U.S. Customs and Border Protection

General Notices

PROPOSED COLLECTION; COMMENT REQUEST

On-Line Allegation Submission

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: 60-Day Notice and request for comments; New collection of information.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the On-Line Allegation Submission. This request for comment is being made pursuant to the Paperwork Reduction Act (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 8, 2008, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, N.W, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, Rm. 3.2.C, 1300 Pennsylvania Avenue N.W, Washington, D.C. 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency’s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden in-

cluding the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: On-Line Allegation Submission

Form Number: None

Abstract: CBP proposes to develop an On-line Allegation Submission website that will provide a means for concerned members of the trade community to confidentially report violations to CBP.

Current Actions: This is being submitted to establish a new information collection.

Type of Review: New information collection

Affected Public: Businesses, Individuals

Estimated Number of Respondents: 100

Estimated Time Per Respondent: 15 minutes

Estimated Total Annual Burden Hours: 25 hours

Estimated Total Annualized Cost on the Public: \$750

Dated: November 2, 2007

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Branch.*

[Published in the Federal Register, November 9, 2007 (72 FR 63622)]

PROPOSED COLLECTION; COMMENT REQUEST

Arrival and Departure Record: (Forms I-94 and I-94W)

AGENCY: Customs and Border Protection (CBP), Department of Homeland Security

ACTION: 60-Day Notice and request for comments; Revision of an existing information Collection: 1651-0111.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Arrival and Departure Record, Forms I-94 and I-94W. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before January 8, 2008, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 344-1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104-13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Arrival and Departure Record

OMB Number: 1651-0111

Form Number: I-94 and I-94W

Abstract: These forms are used to deliver to the CBP Officers at the port of arrival lists or manifests of persons on board arriving and departing vessels and aircrafts. These forms are completed by the master or commanding officer, or authorized agent, owner, or consignee of the vessel or aircraft. CBP proposes to revise this information collection by adding e-mail address and phone number to the I-94 and I-94W.

Current Actions: This submission is being submitted to revise the current information collection.

Type of Review: Revision

Affected Public: Individuals

Estimated Number of Respondents: 17,924,380

Estimated Time Per Respondent: 7 minutes

Estimated Total Annual Burden Hours: 2,079,228

Estimated Total Annualized Cost on the Public: \$120,958,321

Dated: November 2, 2007

TRACEY DENNING,
*Agency Clearance Officer,
Information Services Group.*

[Published in the Federal Register, November 9, 2007 (72 FR 63622)]

DEPARTMENT OF HOMELAND SECURITY,
OFFICE OF THE COMMISSIONER OF CUSTOMS.

Washington, DC, November 7, 2007

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 Trade.*

**PROPOSED MODIFICATION OF A RULING LETTER AND
REVOCATION OF TREATMENT RELATING TO THE
ADMISSIBILITY OF CERTAIN UTILITY KNIVES**

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

ACTION: Proposed modification of a classification ruling letter and revocation of treatment relating to the admissibility of certain utility knives.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), this notice advises interested parties that U.S. Customs and Border Protection (CBP) is proposing to modify a ruling letter relating to the admissibility of certain utility knives. CBP is also proposing to modify or revoke any treatment previously accorded by it to substantially identical merchandise.

DATE: Comments must be received on or before December 21, 2007.

ADDRESS: Written comments are to be addressed to U.S. Customs and Border Protection, Office of International Trade, Regulations & Rulings, Attention: Trade and Commercial Regulations Branch, 1300

Pennsylvania Avenue N.W., Washington, D.C. 20229. Submitted comments may be inspected at the offices of Customs and Border Protection, 799 9th Street, NW, Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

FOR FURTHER INFORMATION CONTACT: W. Richmond Beevers, Intellectual Property Rights and Restricted Merchandise Branch: (202) 572–8723.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–1 82, 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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP is proposing to modify a ruling letter pertaining to the admissibility of certain utility knives. Although in this notice, CBP is specifically referring to the modification of Headquarters Ruling Letter HQ W479898, dated June 29, 2007 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during the notice period.

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

In HQ W479898, CBP ruled, in part, that a utility knife with a retractable blade that extended into the open and locked position when pressure was applied to an elongated activator, under tension of a spring which resisted extension of the blade, being stretched as the activator lever was depressed, and assisted in the retraction of the blade, was prohibited from entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245). Since the issuance of that ruling, CBP has reviewed the admissibility of the utility knives and has determined that the cited ruling is in error as it pertains to the "Squeeze Knife"TM utility knives.

Pursuant to 19 U.S.C. 1625(c)(1), CBP is proposing to modify HQ W479898 and is proposing to revoke or modify any other ruling not specifically identified, to reflect the admissibility of the "Squeeze Knife"TM utility knives according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H017909, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: November 7, 2007

JEREMY N. BASIN,
Director,
Border Security and Trade Compliance Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W479898
June 29, 2007
ENF-4-02-OT:RR:BSTC:IPR 479898 AML
CATEGORY: Marking; Restricted Merchandise

MR. TROY CLARKE
CBT INTERNATIONAL, INC., CHB
110 West Ocean Boulevard
Suite 728
Long Beach, CA 90802

RE: Binding Ruling Request for marking requirements of utility knives;
admissibility; Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.*

DEAR MR. CLARKE,

This is in response to your request dated June 2, 2006, on behalf of Al-trade Tools, LLC, for a binding ruling regarding the proper method of marking for country of origin purposes, *viz.* whether the blades of utility knives are required by regulation to be marked. The request, addressed to the National Commodity Specialist Division (NCSA), was forwarded to this office for reply because of questions concerning the admissibility of knives *vis-à-vis* the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.*, as implemented by the Customs and Border Protection (CBP) Regulations at 19 CFR §§ 12.95 – 12.103. Samples were provided in retail packages for our examination.

FACTS:

We describe the samples provided as follows:

The “Quick Change Folding Utility Knife” (model # 150014) retail package contains two folding utility knives in sizes, “Mini” and “Large.” The handle of the folded “Mini” measures approximately 2 ½ inches and it measures 3 ¾ inches when extended. The “blade” on the “Mini”, which resembles a utility/dry wall/“razor knife” blade, is ½ inch long. The Large model has a handle that is approximately 4 inches in length. When unfolded, the large model is approximately 6 ¼ inches in length. The “blade” of the article, which appears to be a standard utility/dry wall/“razor knife” blade, is approximately 7/8 of an inch long. Both models are folding knives that have a slide button on the side, which, when pressed, allows the knife to be unfolded by the user grasping the extension and pulling it from the handle, similar to the method of opening a jackknife.

The “Quick Release Folding Knife” (model # 150017) retail package contains a drywall or utility knife of unique design. The body of the article is approximately 6 inches in length. The “blade” of the article which appears to be a standard utility/dry wall/“razor knife” blade, is approximately 1 inch long when fully extended. The blade is extended, like most other utility knives, by the application of pressure onto a button that can be released into grooves that hold the blade at desired degrees of partial extension (approximately ¼ and ½ of an inch) or full extension. The knife has a separate button which, when depressed, folds the body of the knife in half and exposes a chamber in which replacements utility blades for the knife are stored.

The “Squeeze Knife”TM has the appearance of a single utility knife and is approximately 6 ½ inches in length. The “blade” of the article which appears

to be a standard utility/dry wall/“razor knife” blade, is approximately 1 inch long when fully extended. The “blade” springs into the open and locked position when pressure is applied to an elongated activator that comprises part of the handle. The elongated activator locks the blade in position and forms part of the grip of the knife. A separate button on the side of the knife is depressed to retract the blade back into the body of the knife. There is also a blade-shaped storage compartment for replacement blades built into the body of the knife.

ISSUES:

Whether the utility knives are admissible into the United States?

Whether the goods, if determined to be admissible into the United States, are excepted from individual country of origin marking pursuant to 19 CFR 134.32(d)?

LAW and ANALYSIS:

Admissibility

The admissibility of knives into the commerce of the United States is determined according to the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.*, as implemented by the CBP Regulations at 19 CFR §§ 12.95 – 12.103. The CBP Regulations restate the provisions of 15 U.S.C. § 1241 *verbatim*. As we have stated many times, most recently in Headquarters Ruling Letter (HQ) 116315, dated March 1, 2005:

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.

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.

(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). 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.

(b) Weapons with fixed blades. Importations of certain articles having a fixed unexposed or exposed blade are not within the prohibition of 15 U.S.C. 1241 through 1245. However, upon release by Customs, possession of these admissible articles which include such weapons as sword canes, camel whips, swords, sheath knives, machetes and similar devices that may be capable of use as weapons may be in violation of State or municipal laws.

§ 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 statute and relevant CBP regulations prohibit the importation of knives which are for use solely as weapons while explicitly permitting the importation of “common and special purpose” knives (see

15 U.S.C. §§ 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), (“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.”)(*Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988) (“describing a Balisong: ”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).

In *Precise Imports Corp. v. Kelly*, 378 F.2d 1014, 1017 (2d Cir. 1967), the court observed 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.

In *Fall v. Esso Standard Oil Co.*, 297 F.2d 411, 414 (5th Cir. 1961), a wrongful death suit brought by the widow of a sailor who was stabbed with a switchblade, the court, through *dicta*, observed that because of their requisite characteristics, the type of and apparent intended use knives must be considered vis-à-vis the Switchblade Knife Act:

A useful tool may be a dangerous weapon. Lizzie Borden took an axe. A weapon may be a useful tool. The trial judge cleaned fish with his switchblade knife. But an axe belongs in a tool shed; a seaman cannot bring one aboard ship . . . Because of the dual nature of certain instru-

ments as tools and weapons, the determination of the character of the instrument for purposes of the litigation is usually one for the jury.

Thus the court stated the essential question that must be answered here: if what appears to be a drywall or utility knife has characteristics of, *i.e.*, opens automatically like a prohibited switchblade knife, does the utilitarian or commercial purpose exception in 19 CFR § 12.95(c) override the general prohibition?

The knives at issue appear to be drywall or utility knives, equipped with utility knife blades. We have conducted extensive research regarding the switchblade knife act and the types of knives that are proscribed thereby, no authority appears to exist which addresses the exceptions to the act for “utilitarian” knives set forth at 19 CFR 12.95(c).

It is axiomatic in regard to the interpretation of statutory language that “when . . . the terms of a statute [are] unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances.” *United States v. James*, 478 U.S. 597, 606, 92 L. Ed. 2d 483, 106 S. Ct. 3116 (1986) (quoting *Rubin v. United States*, 449 U.S. 424, 430, 66 L. Ed. 2d 633, 101 S. Ct. 698 (1981) (internal quotation marks omitted)). Moreover, absent a “clearly expressed legislative intention to the contrary,” a statute’s plain meaning “must ordinarily be regarded as conclusive.” *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 64 L. Ed. 2d 766, 100 S. Ct. 2051 (1980). *Glaxo Operations UK, Ltd. v. Quigg*, 894 F.2d 392, 395 (Fed. Cir. 1990).

We conclude that while *all* knives can potentially be used as weapons, given that 19 CFR 12.95(c) lists six enumerated utilitarian uses (set forth above), only those knives that are specifically designed as (or insignificant preliminary preparation can be made into) switchblade knives or weapons are proscribed under the relevant statute and regulations.

In turning to the knives at issue, the “Quick Change Folding Utility Knife” (model # 150014) which describes the two folding utility knives in two sizes, “Mini” and “Large,” open by the depression of a button which allows the articles to be manually opened, rather than “by operation of inertia, gravity, or both.” See 19 CFR 12.95(a)(2) above. The Quick Change knives cannot be opened by “the flick of a wrist.” See HQ 115713, dated July 29, 2002, HQ 115725 dated July 22, 2002 and New York Ruling Letter (NY) G83213, dated October 13, 2000. These knives are variations of utilitarian knives used by tradesmen. Therefore, the Quick Change Folding Knives fall within the utilitarian and commercial purpose exception set forth in the pertinent regulations at 19 CFR § 12.95(c). Thus, these models do not violate the proscriptions of the Switchblade Act and are admissible into the United States.

The “Squeeze Knife”TM is opened by the application of pressure on the handle that springs the utility blade into the extended and locked position. Because of these characteristics, the “Squeeze Knife”TM *prima facie* meets the definition of a switchblade knife as provided in § 12.95(a)(1) (*i.e.*, a blade which opens automatically by operation of inertia, gravity or both). However, the utility knife is similar to a utility knife in appearance and function, and the utility blade extends approximately one inch when exposed. This model is not a prototypical switchblade or stiletto; rather, it is a spring activated utility knife which is designed for single-handed use by tradesmen. Given the explicit language of the Switchblade Knife Act and the implementing regulations, we are constrained to conclude that the Squeeze

Knife is prohibited from entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245).

The “Quick Release Folding Knife” (model # 150017) does not have the proscribed characteristics of a switchblade or gravity knife. While it does fold open when a button is depressed, the folding action exposes stored blades, rather than exposing a blade for immediate use. Therefore, this model does not violate the proscriptions of the Switchblade Act and is admissible into the United States.

Marking

Section 304 of the Tariff Act of 1930, as amended, (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Congressional intent in enacting 19 U.S.C. 1304 was that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. “The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods are produced, be able to buy or refuse to buy them, if such marking should influence his will.” *United States v. Friedlaender & Co*, 27 C.C.P.A. 297 at 302 (1940).

Part 134, Customs and Border Protection (CBP) Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304. Section 134.41(b), Customs Regulations (19 CFR §134.41(b)), mandates that the ultimate purchaser in the U.S. must be able to find the marking easily and read it without strain.

Articles for which the marking of the containers will reasonably indicate the origin of the article are excepted from marking under 19 U.S.C. 1304(a)(3)(D). For an exception to be granted under 19 U.S.C. 1304(a)(3)(D), generally the article must be imported in a marked retail container which will reach the ultimate purchaser unopened. See also 19 CFR 134.32(d).

The samples are presented packaged for retail sale in plastic blister packs which are marked with country of origin. The NCSO opines, and we agree, that in all foreseeable circumstances the knives and blades will remain in their packaging until they reach the ultimate consumer. We conclude that the utility knives are excepted from individual country of origin marking pursuant to 19 CFR 134.32(d).

HOLDING:

The “Quick Change Folding Utility Knife” (model # 150014) in two sizes, “Mini” and “Large,” fall within the utilitarian and commercial purpose exception set forth in the pertinent regulations at 19 CFR § 12.95(c) and are admissible into the United States.

The “Squeeze Knife”TM *prima facie* meets the definition of a switchblade knife as provided in § 12.95(a)(1) (*i.e.*, a blade which opens automatically by operation of inertia, gravity or both) and is prohibited from entry into the United States pursuant to the Switchblade Knife Act (15 U.S.C. §§ 1241–1245).

The “Quick Release Folding Knife” (model # 150017) does not have the proscribed characteristics of a switchblade or gravity knife and is admissible into the United States.

We conclude that the utility knives are excepted from individual country of origin marking pursuant to 19 CFR 134.32(d).

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.

cc: KATHY CAMPANELLI, National Import Specialist

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H017909
October 4, 2007
ENF-4-02-OT:RR:BSTC:IPR H017909 WRB
CATEGORY: Restricted Merchandise

GREGORY S. MCCUE, ESQ.
STEPTOE & JOHNSON, L.L.P.
1330 Connecticut Ave., N.W.
Washington, DC 20036-1795

RE: Request for Reconsideration of Ruling HQ W479898 Regarding
“Squeeze Knife;” Admissibility; Switchblade Knife Act, 15 U.S.C.
§ 1241, *et seq.*

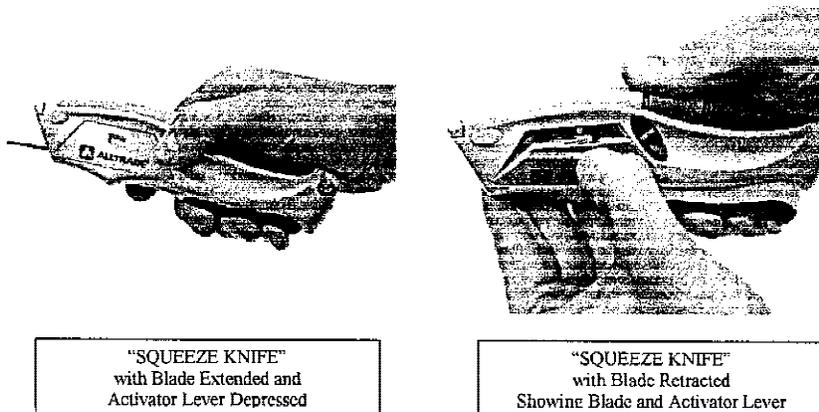
DEAR MR. MCCUE,

This is in response to your request dated September 25, 2007, on behalf of Alltrade Tools, LLC, for a reconsideration of a binding ruling regarding admissibility of “Squeeze Knife” knives vis-à-vis the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.*, as implemented by the Customs and Border Protection (CBP) Regulations at 19 CFR §§ 12.95 – 12.103. A sample was provided for our examination. Based upon the additional information and new evidence submitted, we have agreed to reconsider our prior ruling HQ W479898.

FACTS:

The “Squeeze Knife”TM has the appearance of a single utility knife and is approximately 6 and ½ inches in length. The “blade” of the article, which appears to be a standard utility/dry wall/“razor knife” blade, is approximately 1 inch long when fully extended. The “blade” extends into the open and locked position when pressure is applied to an elongated activator that comprises part of the handle. Inside the knife, a spring is attached to the mechanism which holds the blade. This spring is stretched when the activator lever is depressed, actively resisting the extension of the blade and the depression of the lever. If the lever is depressed only slightly, the blade is extended part-way, without locking in position. If the user ceases applying pressure at any time before the blade is fully extended and locked, the blade automatically retracts into the handle under spring tension. If depressed fully, the elongated activator locks the blade in position and forms part of the grip of the knife. A separate button on the side of the knife is depressed to release the spring, automatically retracting the blade back into the body of the knife. The spring resists extension of the blade, being stretched as the

activator lever is depressed, and assists in the retraction of the blade. There is also a blade-shaped storage compartment for replacement blades built into the body of the knife. Images of the subject knives are shown below:



ISSUES:

Whether the utility knives are admissible into the United States?

LAW and ANALYSIS:

Admissibility

The admissibility of knives into the commerce of the United States is determined according to the Switchblade Knife Act, 15 U.S.C. § 1241, *et seq.*, as implemented by the CBP Regulations at 19 CFR §§ 12.95 – 12.103. The CBP Regulations restate the provisions of 15 U.S.C. § 1241 *verbatim*. As we have stated many times, most recently in Headquarters Ruling Letter (HQ) 116315, dated March 1, 2005:

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.
- 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.
- (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). 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.

(b) Weapons with fixed blades. Importations of certain articles having a fixed unexposed or exposed blade are not within the prohibition of 15 U.S.C. 1241 through 1245. However, upon release by Customs, possession of these admissible articles which include such weapons as sword canes, camel whips, swords, sheath knives, machetes and similar devices that may be capable of use as weapons may be in violation of State or municipal laws.

§ 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 statute and relevant CBP regulations prohibit the importation of knives which are for use solely as weapons while explicitly permitting the importation of “common and special purpose” knives (see 15 U.S.C. §§ 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), (“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.”)(*Taylor v. United States*, 848 F.2d 715, 717 (6th Cir. 1988) (“describing a Balisong: ”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).

In *Precise Imports Corp. v. Kelly*, 378 F.2d 1014, 1017 (2d Cir. 1967), the court observed 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.

In *Fall v. Esso Standard Oil Co.*, 297 F.2d 411, 414 (5th Cir. 1961), a wrongful death suit brought by the widow of a sailor who was stabbed with a switchblade, the court, through *dicta*, observed that because of their requi-

site characteristics, the type of and apparent intended use knives must be considered vis-à-vis the Switchblade Knife Act:

A useful tool may be a dangerous weapon. Lizzie Borden took an axe. A weapon may be a useful tool. The trial judge cleaned fish with his switchblade knife. But an axe belongs in a tool shed; a seaman cannot bring one aboard ship . . . Because of the dual nature of certain instruments as tools and weapons, the determination of the character of the instrument for purposes of the litigation is usually one for the jury.

Thus the court stated the essential question that must be answered here: if what appears to be a drywall or utility knife has characteristics of, *i.e.*, opens automatically like a prohibited switchblade knife, does the utilitarian or commercial purpose exception in 19 CFR § 12.95(c) override the general prohibition?

The knives at issue appear to be drywall or utility knives, equipped with utility knife blades. We have conducted extensive research regarding the switchblade knife act and the types of knives that are proscribed thereby. No authority appears to exist which addresses the exceptions to the act for “utilitarian” knives set forth at 19 CFR 12.95(c).

It is axiomatic in regard to the interpretation of statutory language that “when . . . the terms of a statute [are] unambiguous, judicial inquiry is complete, except in rare and exceptional circumstances.” *United States v. James*, 478 U.S. 597, 606, 92 L. Ed. 2d 483, 106 S. Ct. 3116 (1986) (quoting *Rubin v. United States*, 449 U.S. 424, 430, 66 L. Ed. 2d 633, 101 S. Ct. 698 (1981) (internal quotation marks omitted)). Moreover, absent a “clearly expressed legislative intention to the contrary,” a statute’s plain meaning “must ordinarily be regarded as conclusive.” *Consumer Prod. Safety Comm’n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108, 64 L. Ed. 2d 766, 100 S. Ct. 2051 (1980). *Glaxo Operations UK, Ltd. v. Quigg*, 894 F.2d 392, 395 (Fed. Cir. 1990).

We conclude that while *all* knives can potentially be used as weapons, given that 19 CFR 12.95(c) lists six enumerated utilitarian uses (set forth above), only those knives that are specifically designed as (or insignificant preliminary preparation can be made into) switchblade knives or weapons are proscribed under the relevant statute and regulations.

The “Squeeze Knife”TM is opened by the application of pressure on the handle that extends the utility blade into the extended and locked position against spring pressure. This spring is stretched when the activator lever is depressed, actively resisting the extension of the blade and the depression of the lever. If the user ceases applying pressure at any time before the blade is fully extended and locked, the blade automatically retracts into the handle under spring tension. The spring resists extension of the blade, being stretched as the activator lever is depressed, and assists in the retraction of the blade. Because of these characteristics, the “Squeeze Knife”TM does not meet the definition of a switchblade knife as provided in § 12.95(a)(1) (*i.e.*, a blade which opens automatically by operation of inertia, gravity or both). Rather, the spring action of this knife is the opposite of that covered by the Switchblade Knife Act, in that it automatically retracts or “closes” the knife. This model is not a prototypical switchblade or stiletto; rather, it is a spring activated utility knife which is designed for single-handed use by tradesmen. Given the explicit language of the Switchblade Knife Act and the implementing regulations, we conclude that the Squeeze Knife does not violate the proscriptions of the Switchblade Act and is admissible into the United States.

HOLDING:

The "Squeeze Knife"TM does not have the proscribed characteristics of a switchblade or gravity knife and is admissible into the United States. To the extent that our prior decision in HQ W479898 is incompatible with this determination, HQ W479898 is revoked.

GEORGE FREDERICK MCCRAY, ESQ.,
Chief,
Intellectual Property Rights Branch.

