



June 19, 2009

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

**RE: Comments on Proposed Revocation of Ruling Letters and Revocation of Treatment Relating to the Admissibility of Certain Knives with Spring-Assisted Opening Mechanisms**

Dear Sir or Madam:

Safari Club International (SCI) appreciates the opportunity to comment on the proposed revocation by the U.S. Customs and Border Protection (CBP) of four ruling letters regarding certain knives with spring-assisted opening mechanisms. To begin, the 30 day comment period was insufficient in light of the serious concerns raised in these comments and by others. SCI opposes the revocation of the ruling letters on the grounds that such action is unwarranted and not supported by the law, and could have serious (and possibly unintended) consequences on a large number of Americans, particularly hunters. Alternatively, SCI asks that you clarify the limited nature and extent of the revocation letters.

SCI is a United States based non-profit corporation with approximately 53,000 members worldwide. SCI's missions include the conservation of wildlife, protection of the hunter and hunting rights, and education of the public concerning hunting. SCI's membership would be one of the groups most significantly affected by a change in rules governing imports of spring-assisted opening knives

**Washington DC Office**

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and are very concerned about the possible effect that this ruling could have on the importation of all one-handed opening folding knives.

Knives are an important tool to hunters. The hunting community primarily uses these knives to dress animals that have been legally hunted. The knives are also carried for self-defense against dangerous animals in the wild, as a survival tool and for many other uses in the field. Numerous hunters also legally carry knives in their everyday lives because they are useful tools for many situations. Many of the most popular knives used for these purposes have a thumb stud or hole on the blade so that they can be opened one-handed. Some knives used by hunters are also of the spring-assisted opening variety. These legally carried and useful knives are the ones that CBP has proposed to designate as switchblades and as such will no longer be legally importable into the United States should CBP finalize this proposed rule. In addition, to the extent States, in their regulation of the use and possession of knives, rely on Federal law to define switchblades, any expansion of the definition creates potential violations of State law by unsuspecting citizens. SCI is persuaded that the CBP has incorrectly designated spring-assisted opening knives as switchblades and that CBP should not adopt these proposed ruling letters.

**Customs and Border Protection has incorrectly defined spring-assisted knives as switchblades.**

The CBP has incorrectly characterized spring-assisted knives as switchblades under the Switchblade Act, 15 U.S.C. § 1241. Although CBP has gone through a very detailed analysis of the wording of the law, this reading and interpretation are incorrect.

CBP proposes to reclassify spring-assisted opening knives as switchblades because they “open automatically by operation of inertia, gravity or both” These spring-assisted opening knives **do not**

operate automatically and obviously are not affected by gravity or inertia. CBP first concludes that spring-assisted opening knives are automatic based on the reading of one Sixth Circuit case from 1988. That case states that, “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.” *Taylor v. United States*, 848 F.2d 715, 720 (6th Cir. 1988). This is clearly incorrect, as gravity knives require no flick and only the flip of a switch on the handle and gravity opens the knife with no person acting on the knife. Additionally, a much more recent New York Supreme Court case defined a gravity knife as a knife that must have a blade which locks in place automatically upon release without any effort by the user, and cannot require a manual locking mechanism. *People v. Zuniga*, 303 A.D.2d 773, 774, 759 N.Y.S.2d 86 (N.Y. App. Div 2007). This more modern interpretation opines that any effort by the user, as required in spring-assisted opening knives, cause the knife to not be automatic.

CBP’s argument that spring-assisted opening knives operate by inertia also is incorrect. Spring-assisted opening knives cannot operate by inertia. A user could try to flick his or her wrist as much as they want and the knife will not open. The spring actually keeps the knife locked closed, and only assists in the opening of the knife after the user manually opens the knife by thirty degrees. Additionally, it is not inertia that opens the knife after the user begins the opening process; it is the reversal of the spring that was used to secure the knife closed. This would be the same as if a user had a knife that had no thumbscrew or hole and the user opened the knife halfway and then flicked his or her wrist the rest of the way. No one could reasonably consider that knife a switchblade but under CBP’s proposed ruling it could arguably be considered one. CBP incorrectly identifies this spring-assist as inertia. Under the clear wording of the statute, spring assisted knives are not switchblades.

**Customs and Border Protection's decision to reverse its definition of spring-assisted knives as switchblades likely would not withstand judicial scrutiny.**

CBP attempts to show through case law that their new classification for spring-assisted opening knives is acceptable. However it appears that courts in California, Texas, Michigan, and Illinois have found that assisted-opening knives are not switch blades. See <http://www.akti.org/PDFS/AKTI-CustomsTalkingPoints.pdf>. Additionally as quoted above, the New York Supreme Court recently held that "a gravity knife must have a blade which locks in place automatically upon release without any effort by the user, and cannot require a manual locking mechanism." *People v. Zuniga*, 303 A.D.2d 773, 774, 759 N.Y.S.2d 86 (N.Y. App. Div 2007). All of these rulings are directly contrary to the proposed action by CBP and signal that it is unlikely that a court will agree with CBP's interpretation.

Additionally, CBP is overruling its own longstanding policy (in one case as reflected in a ruling letter from August 2008) without any compelling reason or change in circumstances. If challenged in court, CBP will be afforded significantly less deference in its decision by a reviewing court than normally would be provided.

On the other hand, "[a]s a general matter, of course, the case for judicial deference is less compelling with respect to agency positions that are inconsistent with previously held views." *Pauley v. BethEnergy Mines*, 501 U.S. 680, 698, 111 S.Ct. 2524, 115 L.Ed.2d 604 (1991); see also *INS v. Cardoza-Fonseca*, 480 U.S. 421, 447 n. 30, 107 S.Ct. 1207, 94 L.Ed.2d 434 (1987) ("An agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is entitled to considerably less deference than a consistently held agency view."). When an agency "sharply change[s] its substantive policy, then, judicial review of its action, while deferential, will involve a scrutiny of the reasons given by the agency for the change." *Natural Res. Def. Council, Inc. v. EPA*, 683 F.2d 752, 760 (3rd Cir.1982). Under these circumstances, OSM bears the burden of rationally explaining its departure from its previous position.

*Pennsylvania Federation of Sportsmen's Clubs, Inc. v. Kempthorne*, 497 F.3d 337, 350-351 (3rd Cir. 2007). CBP has only stated “conflicting rulings” as a reason for its review. However CBP identifies only some older decisions from New York and one November 2008 case in which the knives in question sprung fully open by pressing a button on the handle as proof of conflicted rulings. Even if there is a conflict, that is not a compelling reason for the quick reversal. There is no pressing danger in these utilitarian knives. By failing to identify any significant reason for revoking these ruling letters, CBP forfeits most of the deference that would be afforded by the courts.

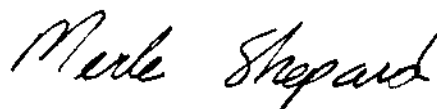
**U.S. Customs and Border Protection should clearly distinguish one-handed opening knives from spring-assisted knives in its decision letters.**

If CBP decides to adopt the proposed revocations and stop the importation of these select few knives, SCI requests that CBP specify that it is not attempting to ban the import of all one-handed opening knives and is only banning these select few knives that are listed in the CBP documents as spring-assisted opening. One-handed opening knives make up a very large percentage of the U.S knife market. The American Knife and Tool Institute estimates that one handed knives might make up almost 80% of the sporting knife market. Knife Rights Knife Industry Statistics, [http://www.kniferights.org/index.php?option=com\\_content&task=view&id=80&Itemid=29](http://www.kniferights.org/index.php?option=com_content&task=view&id=80&Itemid=29). SCI is concerned that the CBP could apply its new interpretation of inertia in the definition of switchblade so broadly as to ban the vast majority of one-handed opening knives, because depending on how a knife is operated, inertia can play some part in opening. While none of the one-handed opening knives operate purely by inertia, almost any knife could have inertia play a part in operation if the user operates it in a specific way. SCI concludes that CPB cannot possibly mean to outlaw the large majority of sporting

knives. Therefore SCI asks that even if CBP adopts the proposed ruling letters, it should clearly state that these ruling letters do not apply to one hand opening, non-spring-assisted knives.

SCI is particularly concerned about the clarity of these ruling letters because many states model their state and local laws banning the possession of switchblades on the Switchblade Knife Act. Therefore, CBP's interpretation of this act has even more far reaching consequences than importation from foreign jurisdictions into the United States. If CBP inadvertently and incorrectly classifies all one-handed opening knives as switchblades, it could make criminals out of a significant portion of the U.S. population and in particular the hunting community. SCI thanks you for the opportunity to comment on this proposed revocation and hopes that these comments are seriously considered.

Sincerely,

A handwritten signature in black ink that reads "Merle Shepard". The signature is written in a cursive, flowing style.

Merle Shepard, President  
Safari Club International  
Safari Club International Foundation