

U.S. Customs and Border Protection

General Notices

Notice of Domestic Interested Party Petitioner's Contesting of Classification Determination

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

ACTION: Notice of petitioner's desire to contest classification determination.

SUMMARY: On August 4, 2006, a domestic manufacturer of glass preforms for optical fibers ("optical glass preforms"), filed a domestic interested party petition in accordance with the procedures of section 516 of the Tariff Act of 1930, as amended, and 19 CFR Part 175 regarding the tariff classification of imported optical glass preforms. The petition challenged CBP's classification of optical glass preforms under subheading 7002.20.10, Harmonized Tariff Schedule of the United States (HTSUS), and requested CBP to reclassify all optical glass preforms under subheading 7020.00.60, HTSUS, as other articles of glass, or, alternatively, under 9001.10.00, HTSUS, as unfinished optical fibers. On July 14, 2008, Customs and Border Protection (CBP) denied the petition and affirmed its decision that optical glass preforms are classified in subheading 7002.20.10, HTSUS, as glass rods of fused quartz or other fused silica, unworked. In accordance with 19 CFR 175.23 and 175.24, CBP is providing notice of its classification decision and is also giving notice of the receipt of petitioner's desire to contest this decision in court.

DATE: June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Allyson R. Matanah, Tariff Classification and Marking Branch, Regulations and Rulings, Office of International Trade, (202) 325-0029.

SUPPLEMENTARY INFORMATION:

Background

This document concerns the classification of imported optical glass preforms by Customs and Border Protection (CBP) and the desire of a domestic interested party to contest CBP's classification decision.

Classification of Optical Glass Preforms

Classification under the Harmonized Tariff Schedule of the United States (HTSUS) is made in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRIs taken in order. The Explanatory Notes to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Optical fibers (also known as fiber optics) are long, thin strands of pure glass about the diameter of a human hair. They are arranged in bundles called optical cables and used to transmit light signals over long distances. The light travels through the core by constantly bouncing from mirror-lined walls, known as the cladding. Because the cladding does not absorb any light from the core, the light wave can travel great distances.

Upon importation, glass preforms for optical fibers (“optical glass preforms”) consist of glass rods of various sizes and dimensions from which glass optical fiber is fabricated. They are produced by a two-step process. In the first step, called Vapor Axial Deposition, extremely fine dusts of silica tetrachloride fuse into a rod when drawn through an annealing furnace, creating the core layer of the optical glass preform. In the second step, the cladding layer is added by fusing a layer of silica dioxide powder to the outside of the core rod. The result is that the core and cladding of the optical glass preform is made of visibly different layers of glass because of their different refractive indexes.

Heading 7002, HTSUS, provides for “Glass in balls (other than microspheres of heading 7018), rods or tubes, unworked”. This is an *eo nomine* provision that covers unworked glass rods. Subheading 7002.20.10, HTSUS, provides for “Rods: of fused quartz or other fused silica”. The 2009 column one, general rate of duty for this provision is free.

Heading 7020, HTSUS, provides for “Other articles of glass” and subheading 7020.00.60, HTSUS, provides for “Other”. This is a basket provision that provides for articles of glass not otherwise covered in Chapter 70 of the HTSUS. The 2009 column one, general rate of duty under this provision is 5 percent *ad valorem*.

Heading 9001, HTSUS, provides for “Optical fibers and optical fiber bundles; optical fiber cables other than those of heading 8544; sheets and plates of polarizing material; lenses (including contact lenses), prisms, mirrors and other optical elements, of any material, unmounted, other than such elements of glass not optically worked”. Subheading 9001.10.00, HTSUS, provides for “Optical fibers, optical

fiber bundles and cables, and other”. The 2009 column one, general rate of duty for this provision is 6.7 percent *ad valorem*.

On April 21, 2006, CBP issued Headquarters Ruling (HQ) 967058 to Lucent Technologies regarding optical glass preforms. In this ruling, CBP concluded that the proper classification is under subheading 7002.20.10, HTSUS. CBP found that because the manufacture of optical glass preforms is a process that requires multiple steps, the articles are not complete until the desired layers are created and form a pure, solid whole. Therefore, the “working” of glass articles occurs after their creation.

Filing of Domestic Interested Party Petition

On August 4th, 2006, Corning, a manufacturer of optical glass preforms in the U.S., filed a domestic interested party petition, in accordance with section 516, Tariff Act of 1930, as amended (19 U.S.C. 1516), requesting that CBP reclassify imported optical glass preforms in either of subheadings 7020.00.60 or 9001.10.00, HTSUS. Corning’s challenge of CBP’s classification of these optical glass preforms turned on the issue of whether the different glass refractions evidence the existence of a glass core rod which has been ‘worked’ by the addition to it of a layer of cladding glass.

On March 28, 2007, in accordance with 19 CFR 175.21, CBP published a Notice of Receipt of Domestic Interested Party Petition filed by petitioner Corning in the **Federal Register** (72 FR 14603). The notice invited written comments on the petition from interested parties until May 27, 2007. Two comments were received in response to this notice, both of which concurred with CBP’s position that the optical glass preforms described in HQ 967058 are classified in subheading 7002.20.10, HTSUS.

Decision on Petition and Notice of Petitioner’s Desire To Contest

On July 14, 2008, CBP issued HQ W968361, denying Corning’s Domestic Interested Party Petition and satisfying the requirements of 19 CFR 175.22(b) by providing the petitioner with notification that the classification of the imported optical glass preforms was found to be correct. CBP classified the optical glass preforms based on its finding that these goods are solid multi-layered rods made from fused silica that are unworked in their condition as imported. This letter officially notified the petitioner that, “CBP correctly classified the glass preform described in HQ 967058, by application of GRI 1, under heading 7002, HTSUS, and specifically under subheading 7002.20.1000, as glass rods, unworked, of fused quartz or other fused silica.”

On August 6, 2008, Corning timely provided CBP with notice of its desire to contest HQ W968361 in the United States Court of International Trade and its desire to contest the liquidation of entries of op-

tical glass preforms at the Port of Charlotte, North Carolina in accordance with 19 U.S.C. 1516(c) and 19 CFR 175.23.

As required by both the applicable statute and regulations, CBP is in receipt of Corning's letter, dated August 6, 2008, establishing the timely notice of its desire to contest in the Court of International Trade CBP's decision letter of HQ W968361 which held that the classification of imported optical glass preforms is under subheading 7002.20.10, HTSUS, as glass rods, unworked, of fused quartz or other fused silica.

AUTHORITY:

This notice is published in accordance with 19 U.S.C. 1516 and sections 175.23 and 175.24 of the CBP Regulations (19 CFR 175.23-24).

Dated: June 9, 2009

JAYSON P. AHERN,
Acting Commissioner,
U.S. Customs and Border Protection.

[Published in the Federal Register, June 12, 2009 [(74 FR 28054)]]

Notice of Cancellation of Customs Broker Licenses

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

ACTION: General Notice

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 USC 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker licenses and all associated permits are cancelled without prejudice.

<u>Name</u>	<u>License #</u>	<u>Issuing Port</u>
Fermin Cuza	10966	Los Angeles
Erwin Rautenberg	03280	Los Angeles
Hans Leuenberger	04082	Los Angeles
Gerhard F. Carl	04143	Philadelphia

DATED: June 5, 2009

DANIEL BALDWIN,
Assistant Commissioner,
Office of International Trade.

[Published in the Federal Register, June 12, 2009 [(74 FR 28053)]]

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

Washington, DC, June 17, 2009

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

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

**PROPOSED REVOCATION OF A RULING LETTER AND
PROPOSED REVOCATION OF TREATMENT RELATING TO
THE TARIFF CLASSIFICATION OF
ELECTRICALLY-HEATED THROWS AND SEAT PADS FOR
AUTOMOTIVE USE**

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

ACTION: Notice of proposed revocation of a tariff classification ruling letter and proposed revocation of treatment relating to the classification of certain electrically-heated throws and seat pads for automotive use.

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

DATE: Comments must be received on or before August 9, 2009.

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

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

SUPPLEMENTARY INFORMATION:

BACKGROUND

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

Pursuant to section 625 (c)(1), Tariff Act of 1930 (19 U.S.C. § 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that CBP intends to revoke a ruling letter pertaining to the tariff classification of certain electrically-heated throws and seat pads for automotive use. Although in this notice, CBP is specifically referring to the revocation of Headquarters Ruling Letter ("HQ") 963001, dated July 22, 1999 (Attachment A), this notice covers any rulings on this merchandise which may exist but have not been specifically identified. CBP has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., a ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930 (19 U.S.C. §1625 (c)(2)), as amended by section 623 of Title VI, CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical

transactions or of a specific ruling not identified in this notice may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision on this notice.

Pursuant to 19 U.S.C. § 1625(c)(1), CBP is proposing to revoke HQ 963001 and any other ruling not specifically identified, to reflect the proper classification of the merchandise according to the analysis contained in proposed HQ H062211, set forth as Attachment B to this document. Additionally, pursuant to 19 U.S.C. § 1625(c)(2), CBP intends to revoke any treatment previously accorded by CBP to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

DATED: June 12, 2009

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

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ 963001
JULY 22, 1999
CLA-2 RR:CR:GC 963001 JAS
CATEGORY: Classification
TARIFF NO.: 8543.89.96

MR. ART GUREVICH
THERMOSOFT INTERNATIONAL CORPORATION
800 E. Northwest Highway, Suite 700
Palatine, IL 60067

RE: NY D84863 Modified; Thermo Throw, Thermo SoftPad; Personal Heaters for Motor Vehicles

DEAR MR. GUREVICH:

In your letter, dated April 19, 1999, you request reconsideration of NY D84863, dated December 17, 1998, a ruling in which the Director of Customs National Commodity Specialist Division, New York, classified the Thermo Throw and the Thermo SoftPad, automotive personal heaters, under a provision in the Harmonized Tariff Schedule of the United States (HTSUS), for other furnishing articles, knitted or crocheted. Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY D84863 was published on June 16, 1999, in the Customs Bulletin, Volume 33, Number 24. No comments were received in response to that notice. NY D84863 also addressed the partial duty exemption under subheading 9802.00.80, HTSUS,

for imported articles that are assembled abroad in whole or in part of fabricated components, products of the United States. This issue is not a part of this modification.

FACTS:

The articles in NY D84863, the Thermo Throw and the Thermo SoftPad, are electric heating devices designed to be placed on the rear bench seat and the front seat of a motor vehicle, and to be plugged into the vehicle's cigarette lighter outlet to warm the occupants. They consist of an outer cover of one or more layers of polyester knit pile fabric and, in the SoftPad, a layer of plastic foam. Between the fabric layers are narrow woven tapes that contain copper wire and/or carbon fibers forming a criss-cross grid connected to electric wires and a thermostat that attach to a power cord. On this cord is an ON/OFF temperature control switch and a cigarette lighter adapter or plug.

The provisions under consideration are as follows:

6304 Other furnishing articles, excluding those of heading 9404:

Other:

6304.91.00 Knitted or crocheted

* * * * *

8543 Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85] . . . : Other machines and apparatus:

Other:

8543.89.96 Other

ISSUE:

Whether electrically heated seat pads and throws for motor vehicles are electrical articles of heading 8543.

LAW AND ANALYSIS:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

Goods that consist of more than one material or substance are prima facie classifiable in two or more headings, and shall be classified according to the principles of GRI 3. GRI 3(b), HTSUS, states, in part, that composite goods consisting of different materials or made up of different components shall be classified as if consisting of that material or component which gives the good its essential character.

The Thermo Throw and Thermo SoftPad are composite goods that are prima facie classifiable in heading 6304, as furnishing articles, in heading 8536 as switches and plugs, and in heading 8543, as electrical apparatus not covered more specifically by another heading in the HTSUS. The latter heading includes, among other things, articles that consist of an assembly of goods or parts operating wholly electrically. Goods of heading 8543 may incorporate mechanical features, provided those features are subsidiary to the electrical

function the apparatus performs. Activation of the ON/OFF switch and setting the temperature manually involves, at least in part, a mechanical function that is subsidiary to the function of producing heat electrically by means of the metallic grid and the electrical cord. Headings 6304, 8536 and 8543 each describe part only of the Thermo Throw and the Thermo SoftPad. Under GRI 3(a), these headings are to be regarded as equally specific with respect to the goods. GRI 3(b) requires that these articles be classified according to their essential character.

The factor or factor which determines essential character varies with the good. The role of a constituent material or component in relation to the use of the good is often a useful indicator of a good's essential character. In this case, the textile and/or foam cover provides a comfortable base on which to sit, and protects the occupant from being burned by direct contact with the metallic wire grid. The ON/OFF temperature control switch sets the requisite temperature and the cigarette lighter adapter or plug completes the electrical connection. All contribute significantly to the overall function of the heating pads. However, it is our opinion that the criss-cross grid is the medium through which heat is produced, and this is the purpose for which the heating pads exist. We conclude that the criss-cross grid constitutes an assembly of goods or parts that operate wholly electrically, and that this assembly, described by heading 8543, imparts the essential character to the Thermo Throw and the Thermo SoftPad. The heating pads in issue must therefore be classified as if they were seat pads and throws for motor vehicles that contain apparatus for producing heat electrically.

Chapter 85, Note 1(a), HTSUS, excludes, among other things, electrically warmed blankets, bed pads, foot-muffs or the like. In our opinion, electrically warmed blankets, bed pads and foot-muffs are designed to be placed on or worn over the person while the Thermo Throw and the Thermo SoftPad are designed to be sat upon. Also, the named articles are designed for domestic, household use, while the Thermo Throw and Thermo SoftPad are designed exclusively for motor vehicle use. We conclude that the Thermo Throw and Thermo SoftPad and the articles enumerated in Note 1(a) are not of like kind, and the former are not subject to exclusionary Note 1(a).

HOLDING:

Under the authority of GRI 3(b), the electrically heated seat pads Thermo Throw and Thermo SoftPad are provided for in heading 8543. They are classifiable in subheading 8543.89.96, HTSUS. By function and design, the Thermo Throw and Thermo SoftPad are unique articles of commerce. For this reason, the principles of this decision are of limited applicability, and intended to apply to these articles specifically.

NY D84863, dated December 17, 1998, is modified accordingly.

In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the Customs Bulletin. Publication of rulings or decisions pursuant to 19 U.S.C. 1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT B]

DEPARTMENT OF HOMELAND SECURITY.
U.S. CUSTOMS AND BORDER PROTECTION,
HQ H062211
CLA-2 OT:RR:CTF:TCM H062211 RM
CATEGORY: Classification
TARIFF NO.: 8516.79.00

MR. ART GUREVICH
THERMOSTAT INTERNATIONAL CORPORATION
800 E. Northwest Highway, Suite 700
Palatine, IL 60067

RE: Revocation of HQ 963001, dated July 22, 1999; Classification of Electrically-Heated Throws and Seat Pads for Automotive Use

DEAR MR. GUREVICH:

This is in reference to Headquarters Ruling Letter ("HQ") 963001, dated July 22, 1999, issued to you on behalf of Thermostat International Corporation. In that ruling, U.S. Customs and Border Protection ("CBP") classified the "Thermo Throw" and the "Thermo Softpad," electrically-heated throws and seat pads for automotive use, under heading 8543, Harmonized Tariff Schedule of the United States ("HTSUS"), as "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in [Chapter 85]."¹ We have reviewed HQ 963001 and found it to be in error.

FACTS:

In HQ 963001, CBP described the merchandise as follows:

[T]he Thermo Throw and the Thermo SoftPad, are electric heating devices designed to be placed on the rear bench seat and the front seat of a motor vehicle, and to be plugged into the vehicle's cigarette lighter outlet to warm the occupants. They consist of an outer cover of one or more layers of polyester knit pile fabric and, in the SoftPad, a layer of plastic foam. Between the fabric layers are narrow woven tapes that contain copper wire and/or carbon fibers forming a criss-cross grid connected to electric wires and a thermostat that attach to a power cord. On this cord is an ON/OFF temperature control switch and a cigarette lighter adapter or plug.

In that ruling, we considered these articles to be "composite goods," classified by application of GRI 3(b).

ISSUE:

Whether the Thermo Throw and the Thermo SoftPad are classified under heading 8516, HTSUS, as electrothermic appliances of a kind used for domestic purposes, or under heading 8543, HTSUS, as electrical machines and apparatus, having individual functions, not specified or included elsewhere in Chapter 85, HTSUS.

¹These articles had been previously classified by CBP under heading 6304, HTSUS, as "Other furnishing articles . . ." See HQ D84863, dated December 17, 1998 and General Notice of Modification of a Ruling Letter and Treatment Relating to the Tariff Classification of Electrically Heater Seat Pads, available in the Customs Bulletin Volume 33, No. 32, dated August 11, 1999.

LAW AND ANALYSIS:

The classification of merchandise under the HTSUS is governed by the General Rules of Interpretation (“GRIs”). GRI 1 provides, in part, that “for legal purposes, classification shall be determined according to terms of the headings and any relative section or chapter notes[.]” In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, GRIs 2 through 6 may then be applied, in order.

The 2009 HTSUS provisions under consideration are as follows:

8516	Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof: Other electro-thermic appliances:
8516.79.00	Other . . . * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus:
8543.89	Other: Other:
8543.89.96	Other . . . * * *

Legal Note 1(a) to Chapter 85, HTSUS, states:

1. This chapter does not cover:
 - (a) Electrically warmed blankets, bed pads, foot-muffs or the like; electrically warmed clothing, footwear or ear pads or other electrically warmed articles worn on or about the person[.]

The Additional U.S. Rules of Interpretation provide, in part:

1. In the absence of special language or context which otherwise requires:
 - (a) a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use;

* * *

When interpreting and implementing the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes (“ENs”) should be consulted. The ENs, although not dispositive nor legally binding, provide a commentary on the scope of each heading of the HTSUS and are generally

indicative of the proper interpretation of these headings at the international level. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The ENs to heading 8516, HTSUS, state, in relevant part:

**(E) OTHER ELECTRO-THERMIC APPLIANCES OF A KIND
USED FOR DOMESTIC PURPOSES**

This group includes all electro-thermic machines and appliances **provided** they are **normally used in the household**. Others include:

* * *

(18) Bed warmers.

* * *

It is the position of CBP that Note 1(a) to Chapter 85, HTSUS, applies to electrically warmed articles of bedding and articles designed to be worn on or about the person. The automotive pads at issue are not articles of bedding and are designed to be sat upon, not worn on or about the person. Accordingly, they are not excluded from classification in Chapter 85, HTSUS, by the Note.

Heading 8516, HTSUS, provides, in relevant part, for “[O]ther electrothermic appliances of a kind used for domestic purposes[.]” The heading is a use provision, governed by Additional U.S. Rule of Interpretation 1(a), HTSUS, cited above. Based on the purpose for which they are used (i.e., to warm car seats), we find that the Thermo Throw and the Thermo SoftPad are of the same class or kind of good as bed warmers and other such electrothermic appliances used in the household. See EN 85.16(E). As such, they are entirely described by heading 8516, HTSUS, at GRI 1.

Insofar as the merchandise is classifiable under heading 8516, HTSUS, it cannot be classified under heading 8543, HTSUS, by the terms of that heading, because it is “specified or included elsewhere in [Chapter 85].” CBP has consistently classified heating pads under subheading 8516.79, HTSUS. See, e.g., HQ 967454, dated January 10, 2005; HQ 087731, dated September 7, 1990; and NY R01528, dated March 16, 2005. As we are able to classify the merchandise at GRI 1, there is no need to consider classification using GRI 3.

HOLDING:

By application of GRI 1 and U.S. Additional Rule of Interpretation 1(a), the Thermo Throw and Thermo SoftPad are classified under heading 8516, HTSUS, specifically in subheading 8516.79.00, which provides in relevant part for: “[O]ther electrothermic appliances of a kind used for domestic purposes; . . . Other electro-thermic appliances: Other.” The column one, general rate of duty is 2.7 % *ad valorem*.

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

EFFECT ON OTHER RULINGS:

HQ 963001, dated July 22, 1999, is hereby revoked.

MYLES B. HARMON,
Director,

Commercial and Trade Facilitation Division.

19 CFR PART 177**REVOCATION OF A RULING LETTER AND REVOCATION
OF TREATMENT RELATING TO THE TARIFF
CLASSIFICATION OF *DOG & CAT GET AWAY***

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

ACTION: Notice of revocation of a ruling letter and revocation of treatment relating to the classification of *Dog & Cat Get Away*.

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”) is revoking a ruling concerning the classification of *Dog & Cat Get Away*, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed revocation was published on March 12, 2009, in Volume 43, Number 11, of the CUSTOMS BULLETIN. One comment was received in opposition to the proposed notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after September 8, 2009.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, Tariff Classification and Marking Branch (202) 325-0029.

SUPPLEMENTARY INFORMATION:**Background**

On December 8, 1993, Title VI (CBP 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 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 43, No. 11, on March 12, 2009, proposing to revoke New York Ruling Letter (NY) R02157, dated August 8, 2005, and proposing to revoke any treatment accorded to substantially identical transactions. One comment was received in opposition to the proposed notice.

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

In NY R02157, CBP ruled that *Dog & Cat Get Away* was classified in subheading 3824.90.91, HTSUS, which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other." The referenced ruling is incorrect because the natural chemical product is used as a pest repellent and therefore classified in subheading 3808.90.95, HTSUS, which provides for: "Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking NY R02157, and is revoking or modifying any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) W968435, set forth as an attachment to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions.

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

Dated: June 15, 2009

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

[ATTACHMENT]

DEPARTMENT OF HOMELAND SECURITY,
U.S. CUSTOMS AND BORDER PROTECTION,
HQ W968435
June 15, 2009
CLA-2 OT:RR:CTF:TCM W968435 ARM
CATEGORY: Classification
TARIFF NO.: 3808.99.95

MS. JILL THURAU
PETSMART, INC.
19601 N. 27th Ave.
Phoenix, AZ 85027

RE: Revocation of NY R02157; Dog & Cat Get Away

DEAR MS. THURAU:

This letter is to inform you that Customs and Border Protection ("CBP") has reconsidered New York (NY) Ruling Letter R02157, issued to you on August 8, 2005, regarding the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of *Dog & Cat Get Away*. CBP classified the merchandise in subheading 3824.90.91, HTSUS, which provides for: "Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included: Other: Other: Other: Other." We have reviewed that ruling and determined it is in error.

Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), a notice was published in the CUSTOMS BULLETIN, Volume 43, No. 11, on March 12, 2009, proposing to revoke New York Ruling Letter (NY) R02157, dated August 8, 2005, and proposing to revoke any treatment accorded to substantially identical transactions. One comment was received in opposition to the notice.

FACTS:

The merchandise at issue is identified as *Dog & Cat Get Away*. It is a mixture of allyl isothiocyanate (the chemical compound responsible for the pungent taste of mustard, horseradish and wasabi), capsaicin and related compounds (the active components of chili peppers), that has been put up in a spray bottle for retail sale. It is intended for use as a vertebrate animal repellent. *Dog & Cat Get Away* is registered with the U.S. E.P.A. (EPA REG. No. 50932-9) for the control of cats, deer, dogs, rabbits, raccoons, and squirrels.

ISSUE:

Is *Dog & Cat Get Away* classified as a “pesticide” under heading 3808, HTSUS, or as a chemical compound not elsewhere specified or included in heading 3824, HTSUS?

LAW AND ANALYSIS:

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6 may be applied.

The 2009 HTSUS provisions under consideration are as follows:

3808 Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers):

3808.99	Other:	Other:
3808.99.95		Other
*	*	* * *

3824 Prepared binders for foundry molds or cores; chemical products and preparations of the chemical or allied industries (including those consisting of mixtures of natural products), not elsewhere specified or included:

3824.90	Other:	Other:	Other:
3824.90.91			Other

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS at the international level. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989). The ENs to heading 3808, HTSUS, state, in pertinent part, the following:

This heading covers a range of products (**other than** those having the character of medicaments, including veterinary medicaments – **heading 30.03 or 30.04**) intended to destroy pathogenic germs, insects (mosquitoes, moths, Colorado beetles, cockroaches, etc.), mosses and moulds, weeds, rodents, wild birds, etc. Products intended to repel pests or used for disinfecting seeds are also classified here.

These insecticides, disinfectants, herbicides, fungicides, etc., are applied by spraying, dusting, sprinkling, coating, impregnating, etc., or may necessitate combustion. They achieve their results by nerve-poisoning, by stomach-poisoning, by asphyxiation or by odour, etc.

Heading 3824, HTSUS, only includes products that are “not elsewhere specified or included.” Therefore, if the product is specified by the terms of heading 3808, HTSUS, it cannot be classified in heading 3824, HTSUS.

Pests are defined as “any organism which injures man, his property or his environment, or which annoys him. Such organisms include principally certain insects, nematodes, fungi, weeds, birds, and rodents, or any other terrestrial or aquatic plant or animal life, or virus, bacteria, or other organisms (except microorganisms on or in living man or other living animals.” MEISTERPRO CROP PROTECTION HANDBOOK 2006, D 322, (Richard T. Meister, ed., Meister Pub. Co. 2006). The instant product repels cats, deer, dogs, rabbits, raccoons, and squirrels away from lawns and landscaping. Squirrels are rodents (www.ucmp.berkeley.edu/mammal/reodentia/rodentia.html). The EN to heading 3808, HTSUS, states that products intended to repel pests are classified in the heading and mentions odor as one of the ways that these products achieve their results. Accordingly, *Dog and Cat Get Away*, put up in spray bottles for retail sale, meets the terms of heading 3808, HTSUS, as a product similar to a rodenticide and is described by EN 3808.

Commenter notes that EN 3808 specifically states that the products included in the heading are intended to destroy rodents, wild birds, etc.; insofar as the merchandise is not used to destroy or kill an animal, the commenter believes that classification in heading 3824, HTSUS, is proper. Commenter fails to note the next sentence that includes products in the heading which are meant only to repel pests. Moreover, heading 38078, HTSUS, covers “similar products” which, in accord with EN 3808, include those products meant to repel pests such as wicks and candles. Hence, we are not persuaded by commenter’s argument that our tariff classification of the product is incorrect. Insofar as the merchandise is classifiable in heading 3808, HTSUS, resort to heading 3824, HTSUS, is not necessary.

HOLDING:

By application of GRI 1, *Dog and Cat Get Away* is classified in heading 3808, HTSUS. Specifically, the merchandise is classified in subheading 3808.99.95, HTSUS, which provides for: “Insecticides, rodenticides, fungicides, herbicides, anti-sprouting products and plant-growth regulators, disinfectants and similar products, put up in forms or packings for retail sale or as preparations or articles (for example, sulfur-treated bands, wicks and candles, and flypapers): Other: Other: Other.” The 2009, column one general rate of duty is 5% ad valorem.

Duty rates are provided for your convenience and are subject to change. The text of the most recent HTSUS and the accompanying duty rates are provided on the World Wide Web at www.usitc.gov.

EFFECT ON OTHER RULINGS:

NY R02157, dated August 8, 2005, is revoked.

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

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

