

Bureau of Customs and Border Protection

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 9 2003)

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

SUMMARY: The copyrights, trademarks, and trade names recorded
with U.S. Customs and Border Protection during the month of Sep-
tember 2003. The last notice was published in the CUSTOMS BUL-
LETIN on October 16, 2003.

Corrections or updates may be sent to Department of Homeland
Security, U.S. Customs and Border Protection, Office of Regulations
and Rulings, IPR Branch, 1300 Pennsylvania Avenue, N.W., Mint
Annex, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: George Frederick
McCray, Esq., Chief, Intellectual Property Rights Branch, (202)
572-8710.

Dated: October 30, 2003.

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

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
COP0300131	20030905	20230905	GEESE IN REED	IMPALA CHRISTIN LECHNER	N
COP0300132	20030910	20230910	OMEGA S.A.	OMEGA S.A.	N
COP0300133	20030910	20230910	MONADIC CIRCLE	WILLIAM F. GEHRKE	N
COP0300134	20030910	20230910	LA LECHE LEAGUE NURSING MOTHER DRAWING	LA LECHE LEAGUE INTERNATIONAL IN	N
COP0300135	20030910	20230910	LA LECHE LEAGUE NURSING MOTHER DRAWING	LA LECHE LEAGUE INTERNATIONAL IN	N
COP0300136	20030911	20230911	ROUTE 66 JAMES DEAN	CIELO CREATIONS, INC.	N
SUBTOTAL RECORDATION TYPE 6					
TMK0300688	20030905	20100627	CROSS & SHIELD DESIGN	SWISS ARMY BAND LTD.	N
TMK0300689	20030905	20110213	HOUSE OF MOHAN	HOUSE OF MOHAN CORPORATION	N
TMK0300690	20030905	20131129	CHAPS RALPH LAUREN (& DESIGN)	PKL USA HOLDINGS INC.	N
TMK0300691	20030905	20100704	CHIPPENDALES & DESIGN	CLP TOUR LTD.	N
TMK0300692	20030905	20130605	ASTROLOGY	HOUSE OF MOHAN CORPORATION	N
TMK0300693	20030905	20130827	LOBO AND DESIGN	GLOBO FOODS LIMITED	N
TMK0300694	20030905	20131020	EVROS AND DESIGN	GLOBO FOODS LIMITED	N
TMK0300695	20030905	20131020	EVROS AND DESIGN	BASEBALL EXPOS, L.P.	N
TMK0300696	20030908	20040528	SKYLINE	BASEBALL EXPOS, L.P.	N
TMK0300697	20030910	20121026	FF	FENDI S.P.A.	N
TMK0300698	20030910	20110965	KATE SPADE	FENDI S.P.A.	N
TMK0300699	20030910	20110424	KATE SPADE NEW YORK	KATE SPADE S.R.L.	N
TMK0300700	20030910	20120205	KATE SPADE NEW YORK	KATE SPADE, LLC	N
TMK0300701	20030910	20121128	M MERRELL CIRCLE DESIGN	KATE SPADE, LLC	N
TMK0300702	20030910	20130107	M CIRCLE DESIGN	WOLVERINE OUTDOORS, INC.	N
TMK0300703	20030910	20110306	M MERRELL OVAL DESIGN	WOLVERINE OUTDOORS, INC.	N
TMK0300704	20030910	20040510	MERRELL	WOLVERINE OUTDOORS, INC.	N
TMK0300705	20030910	20120820	RW DVD+REWRITABLE & DESIGN	KONINKLIJKE PHILLIPS ELECTRONICS	N
TMK0300706	20030910	20130410	BIC & DESIGN	BIC CORPORATION	N
TMK0300707	20030910	20130130	DESIGN ONLY	BIC CORPORATION	N
TMK0300708	20030910	20130330	CHRISTIAN DIOR	BIC CORPORATION	N
TMK0300710	20030910	20130510	TWENTIETH CENTURY-FOX	CHRISTIAN DIOR COUTURE, S.A.	N
TMK0300711	20030910	20130525	BJ CARTRIDGE	TWENTIETH CENTURY-FOX FILM CORP.	N
TMK0300712	20030910	20080920	KDS	CANON KABUSHIKI KAISHA	N
TMK0300713	20030910	20121208	DESIGN ONLY	KOREA DATA SYSTEMS CO., LTD.	N
TMK0300714	20030910	20070107	E-Z WIDER LIGHTS (STYLIZED)	KARSTEN MANUFACTURING CORP.	N
TMK0300715	20030910	20120505	FORMULA 409 & DESIGN	ROBERT BURTON ASSOCIATES, LTD.	N
TMK0300716	20030910	20070617	DRISTAN	KELLYTOY (USA), INC.	N
TMK0300717	20030910	20090804	COACH (PLUS DESIGN)	THE CLOROX COMPANY	N
TMK0300718	20030910	20041218	REDKEN	WYETH SERVICES, INC.	N
TMK0300719	20030910	20131023	VANDORN	L'OREAL USA CREATIVE, INC.	N
TMK0300720	20030911	20131120	WUNNING RABBIT (DESIGN)	FREDERICK WARNE & COMPANY INC.	N
TMK0300721	20030911	20030628	FANTY CLASSIC	L'OREAL USA CREATIVE, INC.	N
TMK0300722	20030911	20041025	WORLD SERIES	WYETH HOLDINGS CORPORATION	N
TMK0300723	20030911	20031003	FROM A TO Z INC	OFFICE OF THE COMMISSIONER OF	N
TMK0300724	20030911	20050917	BLUE JAY, MAPLE LEAF & BASEBALL DESIGN	WYETH HOLDINGS CORPORATION	N
TMK0300725	20030911	20120917	BLUE JAY, MAPLE LEAF & BASEBALL DESIGN	ROGERS BLUE JAYS BASEBALL	N

BUREAU OF CUSTOMS AND BORDER PROTECTION

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TMM OR MSK	OWNER NAME	RES
TMK0300728	20030911	20130107	MARINERS AND DESIGN	THE BASEBALL CLUB OF SEATTLE	N
TMK0300729	20030911	20110714	DESIGN	WYETH HOLDINGS CORPORATION	N
TMK0300730	20030911	20130329	A STYLIZED	ANAHEIM ANGELS L.P.	N
TMK0300731	20030911	20050314	CENTRUM	WYETH HOLDINGS CORPORATION	N
TMK0300732	20030911	20110312	SILVER	WYETH HOLDINGS CORPORATION	N
TMK0300733	20030911	20130215	CR	SKF USA INC.	N
TMK0300734	20030911	20121029	OCCHIOLINI (& DESIGN)	THE UNITED STATES SHOE CORP.	N
TMK0300735	20030911	20090921	CODE	SUNGLASS HUT INTERNATIONAL, INC.	N
TMK0300736	20030911	20120811	SUNGEAR	SUNGLASS HUT INTERNATIONAL, INC.	N
TMK0300737	20030923	20130601	BLAZERS	TRAIL BLAZERS INC.	N
TMK0300738	20030923	20131012	BULLETS AND DESIGN	WASHINGTON BULLETS LP.	N
TMK0300739	20030926	20120723	JEAN PAUL GAULTIER SOLEIL	GAULME S.A.	N
TMK0300740	20030926	20110703	FRAGILE	GAULME S.A.	N
TMK0300741	20030926	20120604	DESIGN	MOLVERINE WORLD WIDE, INC.	N
TMK0300742	20030930	20130112	GALERIEGAULTIER.COM	THE CLOROX COMPANY	N
TMK0300743	20030930	20110530	3 BROX	TRUONG GIANG CORPORATION	N
TMK0300744	20030930	20120522	ERLERA	HARRISON SPORTS, INC.	N
TMK0300745	20030930	20120912	HARRISON	TRUONG GIANG CORPORATION	N
TMK0300746	20030930	20130812	DESIGN	JEUNER GIANG CORPORATION	N
TMK0300747	20030930	20120817	GASOLINE	JEUNER GIANG CORPORATION	N
TMK0300748	20030930	20120702	TORRID	HOT TOPIC, INC.	N
TMK0300749	20030930	20121217	EA SPORTS BIG	ELECTRONIC ARTS INC.	N

SUBTOTAL RECORDATION TYPE 62

TOTAL RECORDATIONS ADDED THIS MONTH 68

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

Washington, DC, November 5, 2003,

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

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



19 CFR PART 177

**MODIFICATION OF RULING LETTER AND REVOCATION OF
TREATMENT RELATING TO CLASSIFICATION OF CUSTARD
FLAN**

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

ACTION: Notice of modification of ruling letter and revocation of treatment relating to the classification of custard flan

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 is modifying a ruling letter pertaining to the tariff classification of custard flan and revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed modification was published in the Customs Bulletin of September 3, 2003, Vol. 37, No. 36. One comment was received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after January 18, 2004.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-572-8778.

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 Customs 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 Customs 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 Customs 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, a notice was published on September 3, 2003, in the *Customs Bulletin*, Volume 37, Number 36, proposing to modify NY I87776, dated December 10, 2002, pertaining to the tariff classification of custard flan under the Harmonized Tariff Schedule of the United States (HTSUS). One comment was received in reply to the notice.

In NY I87776, dated December 10, 2002, the classification of a product commonly referred to as custard flan was determined to be in subheading 1901.90.4600, HTSUS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa . . . not elsewhere specified of included . . . other . . . other dairy products described in additional U.S. note 1 to Chapter 4 . . . other . . . described in additional U.S. note 10 to Chapter 4 and entered pursuant to its provision. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and the comment received and has determined that classification is in error and that the product is properly classified in subheading 1901.90.4200, HTSUS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa . . . not elsewhere specified of included . . . other . . . other dairy products described in additional U.S. note 1 to Chapter 4: dairy preparations containing over 10 percent by weight of milk solids: described in additional U.S. note 10 to Chapter 4 and entered pursuant to its provision. If the

quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the product will be classified in subheading 1901.90.4300, HTSUS, the over-quota subheading. The classifications of other products in NY I87776 are correct and are not being modified by this action.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is modifying NY I87776, and 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) 966116 (see "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions.

As stated in the proposal notice, this revocation will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs 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, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's failure to advise Customs 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 their agents for importations of merchandise subsequent to the effective date of this notice.

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

Dated: October 30, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachment

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966116
October 30, 2003
CLA-2 RR:CR:GC 966116ptl
CATEGORY: Classification
TARIFF NO.: 1901.90.4200; 1901.90.4300

MS. MARIA E. CELIS
NEVILLE PETERSON, LLP
80 Broad Street
New York, NY 10004

Re: Modification of NY I87776; "Danette Flan"

DEAR MS. CELIS:

This is in response to your request, dated December 10, 2002, that Customs reconsider New York Ruling Letter (NY) I87776, issued by the National Commodity Specialist Division in New York, on November 14, 2002, to your firm, on behalf of the Dannon Company regarding the classification of Danette Flan under the Harmonized Tariff Schedule of the United States (HTSUS). That ruling classified the Danette Flan in subheading 1901.90.4600, HTSUS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa . . . not elsewhere specified or included . . . other . . . other dairy products described in additional U.S. note 1 to Chapter 4 . . . other . . . described in additional U.S. note 10 to Chapter 4 and entered pursuant to its provision.

You contend that the product should be classified in subheading 1901.90.2500, HTSUS, which provides for puddings ready for immediate consumption without further preparation.

We have reviewed the ruling and determined that, based on the composition of the product, the classification was incorrect. The correct classification, as discussed below, is in subheading 1901.90.4200, HTSUS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa . . . not elsewhere specified or included . . . other . . . other dairy products described in additional U.S. note 1 to Chapter 4: dairy preparations containing over 10 percent by weight of milk solids: described in additional U.S. note 10 to Chapter 4 and entered pursuant to its provision. If the quantitative limits of additional U.S. note 10 to chapter 4 have been reached, the product will be classified in subheading 1901.90.4300, HTSUS, the over-quota subheading.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of NY I87776 was published on September 3, 2003, in the *Customs Bulletin*, Volume 37, Number 36. You submitted the only comment received. This letter responds to the points you raised in that comment.

FACTS:

The product under consideration, "Danette Flan," is a ready-to-eat, soft, yet moderately firm, light yellow colored product, put up in foil sealed plastic cups, each containing 100 grams, net weight. The product is said to contain the following ingredients: skim milk, cream, refined sugar, powdered eggs, carrageenan, skim milk powder, anhydrous tetrasodium pyrophos-

phate, vanillin flavor, color and caramel. Samples you provided were examined and disposed of because they were perishable.

ISSUE:

Whether a “flan” is a pudding of subheading 1901.90.25, HTSUS, or an “other preparation of goods of headings 0401 to 0404”?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that most goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule 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, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS subheadings under consideration are as follows:

1901	Malt extract; food preparations of flour, groats, meal, starch or malt extract, not containing cocoa or containing less than 40 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included; food preparations of goods of headings 0401 to 0404, not containing cocoa or containing less than 5 percent by weight of cocoa calculated on a totally defatted basis, not elsewhere specified or included:
	* * *
1901.90	Other
	* * *
1901.90.2500	Puddings ready for immediate consumption without further preparation
	* * *
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
	Dairy preparations containing over 10 percent by weight of milk solids:
	* * *
1901.90.4200	Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions

1901.90.4300

Other¹

Other:

* * *

1901.90.4600

Described in additional U.S. note 10 to chapter 4 and entered pursuant to its provisions

1901.90.4700

Other²

You contend that the proper classification of the product, “Danette Flan,” is in subheading 1901.90.2500, HTSUS, which provides for puddings, ready for immediate consumption. You allege this is so because the product satisfies the common meaning of the term “pudding,” and because it is made in “the same exact fashion and made to the same consistency” as another Danon product which has been determined to be classified in the pudding subheading.

As an introduction to your argument that a “Flan” should be considered to be a “Pudding,” you note that the term “pudding” is not defined in the HTSUS or the ENs. You state, and we agree, that in the absence of a definition of a term in the tariff or the ENs, the term’s correct meaning is its common and commercial meaning. The meaning of a term may be ascertained from lexicographic authorities. (See *Carl Zeiss v. United States*, 195 F3d 1375 (Fed. Cir. 1999)) Your submission contains definitions of “pudding” from several sources. You state: “Pudding is also a species of food of a soft or moderately hard consistence, variously made, but often a compound of flour or meal, with milk and eggs, etc. According to the American Heritage Dictionary, pudding is either (1) a sweet dessert, usually containing flour or a cereal product, that has been boiled, steamed, or baked; or (2) a mixture with a soft, puddinglike consistence. Finally, pudding is a thick, soft dessert, typically containing flour or some other thickener, milk, eggs, a flavoring, as tapioca pudding.” (Citations omitted)

You further argue that Customs has classified “similar” products as puddings. You cite NY 854493, dated August 2, 1990, where haupia, a cooked, sweet dessert made from coconut milk, sugar, water and corn starch, put up in cans for retail sale, was classified in subheading 1901.90.2500, HTSUS. You also cite NY 814294, dated November 14, 1995, where pudding products made from water, sucrose syrup, condensed milk, starch, salt, flavor and color were classified in subheading 1901.90.2500, HTSUS, as puddings ready for immediate consumption. Finally, you refer to the ruling you are asking us to reconsider, NY I87776, in which Danette custards, composed of skim milk, sugar, cream, starch, skim milk powder, gelatin, and tetrasodium pyrophosphate, were classified in subheading 1901.90.2500, HTSUS. You claim that because Customs classified these products under the subheading for puddings, your flan should be classified there also.

The definitions and case citations you have provided are consistent with Customs classification and treatment of puddings and flans. In fact, they support the classification of the Danette flans contained in NY I87776, as products that are not puddings. Customs has consistently followed a three-

¹ See subheadings 9904.04.50–9904.05.01.

² See subheadings 9904.04.50–9904.05.01.

part evaluation process in determining whether products should be classified as puddings. The criteria used were the ingredient composition of the product, its method of preparation, and its form.

In NY 854493, which you cited, it is significant that a product, kulolo (taro pudding) which is prepared similarly to the haupia but with different ingredients, and containing no farinaceous substance, was not classified as a pudding, but in heading 2008.99.9090, HTSUS, the provision for other edible parts of plants, otherwise prepared or preserved . . . other . . . other.

A flan may be pudding-like, but it is not a pudding. A reading of the definitions of "pudding" that you provided, and the product ingredients in the cases you cited, will show that all "puddings" contain some starch or flour, meal, or cereal product with a farinaceous base. A flan does not. A flan is a milk-based, sweet dessert, prepared by cooking, but it has no farinaceous base. Traditionally, flans achieve their semi-solid form through the gelling action of the egg ingredients. The Danette flan contains both eggs (powdered) and carrageenan which will also cause gelling.

Puddings are described by that portion of heading 1901, HTSUS, which provides for food preparations of flour, groats, meal, starch, . . . not elsewhere specified or included. Flans, which do not contain flour, meal or starch, are described by that portion of the same heading which provides for food preparations of headings 0401 to 0404 . . . not elsewhere specified or included. Customs has consistently classified flans and other milk-based products that do not qualify for classification as puddings in the dairy subheadings of heading 1901, HTSUS. (See HQ 950624, dated February 20, 1992; HQ 958036, dated August 4, 1995) The actual subheading depends on the amount of milk solids in the product.

In a comment submitted in response to the notice of proposed modification of NY I87776, in the Customs Bulletin, you raise some points not made in earlier submissions, and rephrase others.

The comment states that Congress clearly "intended that "puddings" of HTS Heading 1905, which are products of flour, be distinct from puddings of Heading 1901, which may or may not contain flour." We agree that by providing for puddings twice in the same chapter Congress did intend to distinguish between the two varieties. However, we disagree with the interpretation you offer. As you said, prior to the adoption of the Harmonized System, all puddings were classified in the provision for bread, pastry, . . . similar baked goods, and puddings. This provision was retained in the heading covering bakers wares (1905). The provision covering food preparations of flour, meal starch or malt extract (1901) provided Congress the opportunity to separate ready to eat dessert and snack puddings from those traditionally recognized as bakers wares. However, this new provision did not alter or change the tariff definition of the word "pudding." It did not expand the tariff definition of what had been considered puddings, but merely placed ready-to-eat puddings in a different heading. As stated elsewhere in this letter, it has consistently been Customs practice to classify products as puddings only when they contain, as an ingredient, a starch material.

The comment continues to state that the common meaning of the term "pudding" is now understood to encompass both types of products, and that heading 1901.90.25 is not limited to products "made from flour." In an effort to show that the current understanding of the word "pudding" includes products which do not contain flour or other farinaceous substances, the com-

ment provides dictionary definitions and internet recipes for several “newer” “dairy-based dessert-type puddings.”

In response to the argument that “new” products are being created and being described as “puddings” by the marketer or chef and should therefore be considered “puddings” for classification purposes, Customs responds that products such as Dannon’s have always existed and have been known as “Flans.” “Flans” have always been known throughout culinary circles as being distinct from “puddings”. We note that Dannon recognizes this distinction and that the product under consideration is not marketed as a “pudding,” but rather as a “flan.” Because they do not contain a farinaceous substance among their ingredients, flans have consistently been classified as other food preparations of goods of headings 0401 to 0404, in subheadings 1901.90.42 through 47, HTSUS, the provisions that do not include puddings.

When considering the product, Danette flan, one determines the total milk solids composition of the product by adding the milk solid percentage of the various milk component ingredients together. For this product, they are: skim milk—73.95% (with a standard 9.5% milk solids) produces 7.02% milk solids; cream (40% fat content)—8.7% produces 3.23% milk solids; and skim milk powder—1.33% produces 1.33% milk solids. Thus, the total percentage of milk solids in the product is: $7.02 + 3.23 + 1.33$ or 11.58%. Because this is greater than 10%, classification is in subheadings 1901.90.4200 or 1901.90.4300, HTSUS, depending on whether the quantitative limits of additional U.S. note 10 to chapter 4 have been reached.

In NY I87776, the Danette Flan was classified in the subheading for dairy preparations which do not contain over 10 percent by weight milk solids. As discussed above, the product does contain over 10 percent by weight milk solids. Therefore, this ruling modifies NY I87776 by correcting the classification of Danette flan to properly reflect its ingredient composition.

HOLDING:

Danette Flan, a ready-to-eat yellow-colored product in 100 gram foil-sealed plastic cups, is classified in subheading 1901.90.4200, HTSUS, which provides for food preparations of goods of headings 0401 to 0404, not containing cocoa . . . not elsewhere specified or included . . . other . . . other dairy products described in additional U.S. note 1 to Chapter 4: dairy preparations containing over 10 percent by weight of milk solids: described in additional U.S. note 10 to Chapter 4 and entered pursuant to its provision. If the quantitative limits of additional U.S. note 10 to Chapter 4 have been reached, the product will be classified in subheading 1901.90.4300, HTSUS, the over-quota subheading.

EFFECT ON OTHER RULINGS:

NY I87776, dated November 14, 2002, is modified in accordance with this ruling. In accordance with 19 U.S.C. 1625(c)(1), this ruling will become effective 60 days after its publication in the Customs Bulletin.

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

19 CFR PART 177

PROPOSED REVOCATION AND MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF CERTAIN ELECTRONIC HANG TAGS

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

ACTION: Notice of proposed revocation of two ruling letters, modification of one ruling letter, and revocation of treatment relating to tariff classification of certain electronic hang tags.

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 intends to revoke two ruling letters and modify one ruling letter pertaining to the tariff classification of certain electronic hang tags under the Harmonized Tariff Schedule of the United States ("HTSUS"). Customs also intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before December 19, 2003.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs and Border Protection, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at Customs and Border Protection, 799 9th Street, N.W., Washington, D.C. during regular business hours. Arrangements to inspect submitted comments should be made in advance by calling Joseph Clark at (202) 572-8768.

FOR FURTHER INFORMATION CONTACT: Gerry O'Brien, General Classification Branch, (202) 572-8780.

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 volun-

tary 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 Customs 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 Customs 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 Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(1)), this notice advises interested parties that Customs intends to revoke two ruling letters and modify one ruling letter pertaining to the classification of certain electronic hang tags. Although in this notice Customs is specifically referring to three rulings, NY 801735, NY C80921, and NY H83244, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs 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 notice of this proposed action.

In NY 801735 dated September 28, 1994, NY C80921 dated November 10, 1997, and NY H83244 dated August 6, 2001, set forth as Attachments A, B, and C, respectively, to this document, Customs classified the electronic hang tags in subheading 8531.90.90,

HTSUS, as: "Electric sound or visual signaling apparatus . . . ; parts thereof: Parts: Other: Other."

It is now Customs position that the articles are classified in sub-heading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter . . . : Other machines and apparatus: Proximity cards and tags." Proposed HQ 966784 modifying NY 801735, proposed HQ 966785 revoking NY C80921, and proposed HQ 966786 revoking NY H83244 are set forth as Attachments D, E, and F, respectively, to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY 801735 and revoke NY C80921, NY H83244 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 966784, 966785, and 966786. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

DATED: November 3, 2003

John Elkins for MYLES B. HARMON,
Director,
Commercial Rulings Division.

Attachments

[ATTACHMENT A]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY 801735
September 28, 1994
CLA-2-39:S:N:N6:221 801735
CATEGORY: Classification
TARIFF NO.: 3926.90.9590; 8531.90.8000

MR. ABEL MEDINA
PARKER & COMPANY
P.O. Box 271
4694 Coffee Port Road
Brownsville, TX 78521

RE: The tariff classification of anti-shoplifting security tags from Mexico.

DEAR MR. MEDINA:

In your letter dated August 18, 1994, on behalf of Asset Protection, Inc., you requested a tariff classification ruling.

The two samples submitted with your request are used as anti-shoplifting devices. Both are designed to be secured to clothing. The ink tag consists of a plastic shell in which ink is encased. If the tag is forcibly removed, the shell breaks and the ink stains the clothing.

The electronic tag contains an inductive coil that is tuned to a certain frequency. When passed through two antennas that are set to a selected frequency, the signal is picked up and an alarm is triggered.

The applicable tariff provision for the ink tag will be 3926.90.9590, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other articles of plastics, other. The general rate of duty will be 5.3 percent ad valorem. The applicable tariff provision for the electronic tag will be 8531.90.8000, HTSUSA, which provides for electric sound or visual signaling apparatus, other than those of heading 8512 or 8530 . . . parts, other. The general rate of duty will be 2.7 percent ad valorem.

You have also requested a ruling on the parts which are used to fasten the tags to the clothing, when imported separately from the tags. Your inquiry does not provide enough information for us to give a classification ruling on these parts. Your request for a classification ruling should include a sample of each of the parts and should identify the material from which the pins, tacks or nails are made.

You have also requested a ruling on whether the individual tags must be marked with the country of origin. The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its 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.

Part 134, Customs 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. Section 134.1(d) defines the ultimate purchaser as generally the last person in the U.S. who will receive the article in the form in which it was imported. In this case, the ultimate purchaser of the tags is the retail store which purchases the security devices for attachment to its merchandise.

An article is excepted from marking under 19 U.S.C. 1304 (a)(3)(D) and section 134.32(d), Customs Regulations (19 CFR 134.32(d)), if the marking of a container of such article will reasonably indicate the origin of such article. Accordingly, the tags may be excepted from individual marking provided that they are imported in containers which are clearly marked with the country of origin, and provided the district director at the port of entry is satisfied that the tags will reach the ultimate purchaser in the United States in the original marked unopened containers.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

**JEAN F. MAGUIRE,
Area Director,
New York Seaport.**

[ATTACHMENT B]

**DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY C80921
November 10, 1997
CLA-2-85:RR:NC:1: 112 C80921
CATEGORY: Classification
TARIFF NO.: 8531.90.9000**

**MS. PEARL SZEWCZYK
AMERI-CAN CUSTOMHOUSE BROKERS, INC.
15 Lawrence Bell Drive
Amherst, NY 14221**

RE: The tariff classification of a radio frequency tag from the Netherlands and Canada

DEAR MS. SZEWCZYK:

In your letter dated October 14, 1997, on behalf of ID Security Systems, you requested a tariff classification ruling.

As indicated by the submitted literature and sample, the radio frequency tag is a 2 inch X 2.5 inch rectangular device which is designed to be affixed to a book or other object and used in conjunction with an alarm system. The tag is comprised of a layer of paper, polythene, an aluminum antenna coil, and a capacitor. In operation, the capacitor tunes the coil to a designated frequency. When the antenna coil comes in contact with the radio frequency signal sent out by the anti-shoplifting alarm apparatus, the coil resonates at the frequency which is recognized by the anti-shoplifting alarm.

The applicable tariff provision for the radio frequency tag will be 8531.90.9000, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), which provides for other parts of electric sound or visual signaling apparatus. The general rate of duty will be 1.9 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the rul-

ing, contact National Import Specialist David Curran at 212-466-5680.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF HOMELAND SECURITY.
BUREAU OF CUSTOMS AND BORDER PROTECTION,
NY H83244
August 6, 2001
CLA-2-85:RR:NC:1:112 H83244
CATEGORY: Classification
TARIFF NO.: 8531.90.9000

MR. CURTIS W. KNAUSS
NEVILLE PETERSON, LLP
80 Broad Street
New York, NY 10004

RE: The tariff classification of a hang tag from China or Hong Kong

DEAR MR. KNAUSS:

In your letter dated July 2, 2001, on behalf of Target Corporation, you requested a tariff classification ruling.

As indicated by the submitted samples and information, the hang tag consists of a radio frequency circuit sandwiched between printed paper or cardboard labels. In operation, the radio frequency circuit interacts with a transmitter and receiver to trigger an alarm in cases where the tag has not been deactivated by a cashier.

The applicable subheading for the hang tag will be 8531.90.9000, Harmonized Tariff Schedule of the United States (HTS), which provides for electric sound or visual signaling apparatus, . . . ; parts thereof: Parts: Other: Other. The rate of duty will be 1.3 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-637-7049.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966784
CLA-2 RR:CR:GC 966784 GOB
CATEGORY: Classification
TARIFF NO.: 8543.81.00

ABEL MEDINA
PARKER & COMPANY
P.O. Box 271
4694 Coffee Port Road
Brownsville, TX 78521

RE: Modification of NY 801735; Electronic Hang tag

DEAR MR. MEDINA:

This letter is with respect to NY 801735 dated September 28, 1994, which was issued to you on behalf of Asset Protection, Inc. with respect to the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of certain hang tags. We have reviewed NY 801735 and believe one of the classifications therein is incorrect. This ruling sets forth the correct classification.

FACTS:

NY 801735 involved the classification of an electronic hang tag and an ink tag. This modification of that ruling pertains only to the electronic hang tag, which was described as follows:

The electronic tag contains an inductive coil that is tuned to a certain frequency. When passed through two antennas that are set to a selected frequency, the signal is picked up and an alarm is triggered.

In NY 801735, Customs classified the electronic hang tag in subheading 8531.90.90, HTSUS, as: "Electric sound or visual signaling apparatus . . . ; parts thereof: Parts: Other: Other." We now believe the hang tag is classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Proximity cards and tags."

ISSUE:

What is the classification under the HTSUS of the subject electronic hang tag?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule 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, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive,

specified or included elsewhere in this chapter . . . : Other machines and apparatus: Proximity cards and tags.”

EFFECT ON OTHER RULINGS:

NY 801735 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

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

HQ 966785
CLA-2 RR:CR:GC 966785 GOB
CATEGORY: Classification
TARIFF NO.: 8543.81.00

PEARL SZEWCZYK
AMERI-CAN CUSTOMHOUSE BROKERS, INC.
15 Lawrence Bell Drive
Amherst, NY 14221

RE: Revocation of NY C80921; Electronic Hang tags

DEAR MS. SZEWCZYK:

This letter is with respect to NY C80921 dated November 10, 1997, which was issued to you on behalf of ID Security Systems with respect to the classification under the Harmonized Tariff Schedule of the United States (“HTSUS”) of certain electronic hang tags. We have reviewed NY C80921 and believe it is incorrect. This ruling sets forth the correct classification.

FACTS:

In NY C80921, the electronic hang tag was described as follows:

. . . the radio frequency tag is a 2 inch X 2.5 inch rectangular device which is designed to be affixed to a book or other object and used in conjunction with an alarm system. The tag is comprised of a layer of paper, polythene, an aluminum antenna coil, and a capacitor. In operation, the capacitor tunes the coil to a designated frequency. When the antenna coil comes in contact with the radio frequency signal sent out by the anti-shoplifting alarm apparatus, the coil resonates at the frequency which is recognized by the anti-shoplifting alarm.

In NY C80921 Customs classified the subject hang tag in subheading 8531.90.90, HTSUS, as: “Electric sound or visual signaling apparatus . . . ; parts thereof: Parts: Other: Other.” We now believe the hang tag is classified in subheading 8543.81.00, HTSUS, as: “Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Proximity cards and tags.”

ISSUE:

What is the classification under the HTSUS of the subject electronic hang tags?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule 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, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.90	Parts:
	Other:
8531.90.90	Other
*	* * * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.81.00	Proximity cards and tags

EN 85.31 provides that heading 8531, HTSUS, includes, *inter alia*, the following: electric bells, buzzers, door chimes; electric sound signaling apparatus, horns, sirens; other electrical signalling apparatus for vehicles; indicator panels; burglar alarms; fire alarms; electric vapor or gas alarms; and flame alarms.

EN 85.43 provides in pertinent part as follows:

The heading includes, *inter alia*:

...

(14) **Proximity cards or tags and electronic proximity cards/tags**, which may or may not have a magnetic stripe. Proximity cards/tags usually consist of an integrated circuit with a read only memory, which is attached to a printed antenna. The card/tag operates by creating a field interference (the nature of which is determined by a code contained in the read only memory) at the antenna in order to affect a signal transmitted from, and reflected back to, the reader. This type of card/tag does not transmit data.

We find that the subject electronic hang tags are not of the class or kind of goods described in heading 8531, HTSUS, and EN 85.31. They are not among the goods enumerated in EN 85.31. We find, therefore, that they are not described in heading 8531, HTSUS.

The electronic hang tags are, in essence, electronic proximity tags as described in EN 85.43, above. We find that they are described in heading 8543, HTSUS, and are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter . . . : Other machines and apparatus: Proximity cards and tags."

HOLDING:

The electronic hang tags are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter . . . : Other machines and apparatus: Proximity cards and tags."

EFFECT ON OTHER RULINGS:

NY 801735 is modified.

MYLES B. HARMON,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF HOMELAND SECURITY,
BUREAU OF CUSTOMS AND BORDER PROTECTION,
HQ 966786
CLA-2 RR:CR:GC 966786 GOB
CATEGORY: Classification
TARIFF NO.: 8543.81.00

CURTIS W. KNAUSS
NEVILLE PETERSON LLP
80 Broad Street
New York, NY 10004

RE: Revocation of NY H83244; Electronic Hang tags

DEAR MS. KNAUSS:

This letter is with respect to NY H83244 dated August 6, 2001, which was issued to you on behalf of Target Corporation with respect to the classification under the Harmonized Tariff Schedule of the United States ("HTSUS") of certain electronic hang tags. We have reviewed NY H83244 and believe it is incorrect. This ruling sets forth the correct classification.

FACTS:

In NY H83244, the electronic hang tag was described as follows:

. . . the hang tag consists of a radio frequency circuit sandwiched between printed paper or cardboard labels. In operation, the radio frequency circuit interacts with a transmitter and receiver to trigger an alarm in cases where the tag has not been deactivated by a cashier.

In NY H83244 Customs classified the subject hang tag in subheading 8531.90.90, HTSUS, as: "Electric sound or visual signaling apparatus . . . ; parts thereof: Parts: Other: Other." We now believe the hang tag is classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof: Other machines and apparatus: Proximity cards and tags."

ISSUE:

What is the classification under the HTSUS of the electronic hang tag?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRI's"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule 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, the remaining GRI's may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("EN's") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the EN's provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89-80.

The HTSUS provisions under consideration are as follows:

8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.90	Parts:
	Other:
8531.90.90	Other
*	* * * * *
8543	Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter; parts thereof:
	Other machines and apparatus:
8543.81.00	Proximity cards and tags

EN 85.31 provides that heading 8531, HTSUS, includes, *inter alia*, the following: electric bells, buzzers, door chimes; electric sound signaling apparatus, horns, sirens; other electrical signalling apparatus for vehicles; indicator panels; burglar alarms; fire alarms; electric vapor or gas alarms; and flame alarms.

EN 85.43 provides in pertinent part as follows:

The heading includes, *inter alia*:

...

(14) **Proximity cards or tags and electronic proximity cards/tags**, which may or may not have a magnetic stripe. Proximity cards/tags usually consist of an integrated circuit with a read only memory, which is attached to a printed antenna. The card/tag operates by creating a field interference (the nature of which is determined by a code contained in the read only memory) at the antenna in order to affect a signal transmitted from, and reflected back to, the reader. This type of card/tag does not transmit data.

We find that the electronic hang tags are not of the class or kind of goods described in heading 8531, HTSUS, and EN 85.31. They are not among the goods enumerated in EN 85.31. We find, therefore, that they are not described in heading 8531, HTSUS.

The electronic hang tags are, in essence, electronic proximity tags as described in EN 85.43, above. We find that they are described in heading 8543, HTSUS, and are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter . . . : Other machines and apparatus: Proximity cards and tags."

HOLDING:

The electronic hang tags are classified in subheading 8543.81.00, HTSUS, as: "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter . . . : Other machines and apparatus: Proximity cards and tags."

EFFECT ON OTHER RULINGS:

NY H83244 is revoked.

MYLES B. HARMON,
Director,
Commercial Rulings Division.