U.S. Customs and Border Protection

19 CFR PART 122

NOTICE OF ARRIVAL RESTRICTIONS APPLICABLE TO FLIGHTS CARRYING PERSONS WHO HAVE RECENTLY TRAVELED TO, FROM, OR THROUGH CERTAIN EBOLA-STRICKEN COUNTRIES

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

ACTION: Notice of arrival restrictions.

SUMMARY: This document announces the decision of the Commissioner of CBP to direct all flights to the U.S. carrying persons who have recently traveled to, from, or through Ebola-stricken countries to arrive at one of the U.S. airports where CBP is implementing enhanced screening procedures.

EFFECTIVE DATE: October 21, 2014.

FOR FURTHER INFORMATION CONTACT: Francis Russo, Office of Field Operations, (202) 325–4835, *ofo-ops-cat@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

According to the Centers for Disease Control and Prevention (CDC), the current Ebola virus disease (Ebola) epidemic is the largest in history, affecting multiple countries in West Africa. Ebola, previously known as Ebola hemorrhagic fever, is a rare and deadly disease caused by infection with one of the Ebola virus strains. Ebola can cause disease in humans, nonhuman primates (monkeys, gorillas, and chimpanzees), and other animals. Ebola is caused by infection with a virus of the family Filoviridae, genus Ebolavirus. There are five identified Ebola virus species found in several African countries. The current outbreak is due to Ebola virus (Zaire ebolavirus) in Guinea, Sierra Leone, and Liberia.

In order to assist in preventing the further introduction and spread of this communicable disease in the United States, CBP, in coordination with other DHS components and offices, the CDC, and other

agencies charged with protecting the homeland and the American public, is currently implementing enhanced screening protocols at five U.S. airports that receive the largest number of travelers from Liberia, Guinea, and Sierra Leone. To ensure that all travelers with recent travel to, from, or through the affected countries are screened, CBP directs all flights to the U.S. carrying such persons to arrive at the five airports where the enhanced screening procedures are being implemented. While CBP anticipates working with the air carriers in an endeavor to identify potential travelers from the affected countries prior to boarding, air carriers will remain obligated to comply with the requirement of this notice, particularly in the event that travelers who have recently traveled to, from, or through the affected countries are boarded on flights bound for the U.S.

Notice of Arrival Restrictions Applicable to Flights Carrying Persons Who Have Recently Traveled to, From, or Through Certain Ebola-Stricken Countries

Pursuant to 19 U.S.C. 1433(c) and 19 CFR 122.32, CBP has the authority to limit the location where all aircraft entering the U.S. from abroad may land. Under this authority, I hereby direct all operators of aircraft carrying persons to the U.S. whose recent travel included Liberia, Guinea, or Sierra Leone to land at one of the following five airports: John F. Kennedy International Airport (JFK), New York; Newark Liberty International Airport (EWR), New Jersey; Washington Dulles International Airport (IAD), Virginia; Chicago O'Hare International Airport (ORD), Illinois; and Hartsfield-Jackson Atlanta International Airport (ATL), Georgia.

This list of affected countries and airports may be modified by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cbp.gov.* The restrictions will remain in effect until superseded, modified, or revoked by publication in the **Federal Register** or posting on *www.cbp.gov.*

Dated: October 21, 2014.

R. GIL KERLIKOWSKE,
Commissioner.

[Published in the Federal Register, October 23, 2014 (79 FR 63313)]

NOTICE OF ISSUANCE OF FINAL DETERMINATION CONCERNING VARIOUS ELLIPTICAL EXERCISE MACHINES AND OPTION PACKAGE KITS

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

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection ("CBP") has issued a final determination concerning the country of origin of various elliptical exercise machines manufactured and distributed by Octane Fitness, and their option package kits that add from three products to the elliptical exercise machines. Based upon the facts presented, CBP has concluded that Taiwan is the country of origin of the elliptical exercise machines and two of the option package kits, and China for one option package kit, for purposes of U.S. Government procurement.

DATES: The final determination was issued on October 16, 2014. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within November 24, 2014.

FOR FURTHER INFORMATION CONTACT: Antonio J. Rivera, Valuation and Special Programs Branch, Regulations and Rulings, Office of International Trade, (202) 325–0226.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on October 16, 2014 pursuant to subpart B of Part 177, U.S. Customs and Border Protection Regulations (19 CFR part 177, subpart B), CBP has issued a final determination concerning the country of origin of various elliptical exercise machines, and their option package kits, manufactured and distributed by Octane Fitness, which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, HQ H248696, was issued under procedures set forth at 19 CFR Part 177, subpart B, which implements Title III of the Trade Agreement Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP concluded that, based upon the facts presented, the assembly operations for the elliptical exercise machines performed in Taiwan, using a majority of Taiwanese components, substantially transformed the components into the various elliptical exercise machines. Therefore, the country of origin of the elliptical exercise machines is Taiwan for purposes of U.S. Government procurement. Furthermore, CBP concluded that the three option package kits for the elliptical exercise machines retained their respective countries of origin because the three kits were already in their final form before being packaged into the option kit. Therefore, for U.S. Government procurement purposes, the country of origin is Taiwan for two option package kits, and China for the other option package kit.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: October 16, 2014.

GLEN E. VEREB,
Acting Executive Director,
Regulations and Rulings, Office of
International Trade.

HQ H248696

October 16, 2014
OT:RR:CTF:VS H248696 AJR
CATEGORY: Country of Origin

MR. PETER JOSEPH HAMMOND
DIRECTOR OF OPERATIONS
OCTANE FITNESS
7601 NORTHLAND DRIVE
NORTH SUITE 100
BROOKLYN PARK, MN 55428

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Country of Origin; 23 Variations of Elliptical Exercise Machines and Option Package Kits

DEAR MR. HAMMOND:

This is in response to your letter dated September 30, 2013, forwarded to us from the National Commodity Specialist Division in New York, requesting a final determination on behalf of Octane Fitness ("Octane") pursuant to subpart B of part 177, Customs and Border Protection ("CBP") Regulations (19 C.F.R. § 177.21 *et seq.*). Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of 23 variations of elliptical exercise machines ("Elliptical(s)") and option package kits. We note that Octane is a party-at-interest within the meaning of 19 C.F.R. § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

You describe the pertinent facts as follows. The items at issue consist of 23 Ellipticals produced in Taiwan by Octane. Three option package kits ("Option(s)") can be added onto certain Ellipticals. You advise that each of the Ellipticals, without the Options, consist of two main assemblies: a base assembly and a console assembly. A significant majority of the components comprising the base and the console are stated to originate from Taiwan. The submitted bill of materials, stated to reflect an accurate proportion of materials used to produce the Ellipticals, lists 461 component items for the base assembly and 33 component items for the console assembly. This bill of materials shows that the base is comprised of 450 Taiwanese components, 10 Chinese components, and 1 U.S. component, while the console is comprised of 31 Taiwanese components and 2 Chinese components. You state that the base and the console are produced in Taiwanese factories through an extensive assembly process. Once the assembly process is complete, the bases and consoles are brought together and tested in Taiwan, then packaged separately in Taiwan to facilitate shipment, before being imported from Taiwan to Octane's U.S. warehouses.

Along with the submitted bill of materials reflecting the country of origin of the components, you submitted a list describing the Ellipticals and photos illustrating the step-by-step assembly process in Taiwan.

A. The 23 Variations of Ellipticals

The Ellipticals are presented in charts titled "GSA Elliptical Cross Trainer Model (and Description)." The Ellipticals are further "grouped into like categories": ten "Standing" Ellipticals, nine "Seated" Ellipticals, and four "Lateral" Ellipticals.

The ten Standing Ellipticals include two commercial grade Ellipticals (PRO310 and PRO370) and eight heavy commercial grade Ellipticals (PRO3700 and PRO4700). The PRO3700 and the PRO4700 come in four different models: (1) the Touch Integrated 15″ LCD TV embedded with Netpulse package; (2) the Attached Flat Screen TV package; (2) the 900 MHz Keypad package; and (4) the basic package, which is without the LCD TV, flat screen TV, or keypad. The nine Seated Ellipticals, known under their trade name "xRide," include eight heavy commercial grade Ellipticals (xR5000 and xR6000) and one commercial grade Elliptical (xR650), which has total body seating and moving arms. The xR5000 has only lower body seating, while the xR6000 has total body seating and moving arms. The xR5000 and the xR6000 come in four different models: (1) the Touch Integrated 15″ LCD TV embedded with Netpulse package; (2) the Attached Flat Screen TV package; (3) the 900 MHz Keypad package; and (4) the basic package, which is without the LCD TV, flat screen TV, or keypad.

The four Lateral Ellipticals, known under their trade name "LateralX," are all heavy commercial grade Ellipticals under the LX8000 series, which is a total body Elliptical that is laterally adjustable. The LX8000 comes in four different models: (1) the Touch Integrated 15″ LCD TV embedded with Netpulse package; (2) the Attached Flat Screen TV package; (3) the 900 MHz Keypad package; and (4) the basic package, which is without the LCD TV, flat screen TV, or keypad.

These Ellipticals are described to have a similar base and console assembly process, which takes about eight weeks to manufacture in factories located in Taiwan with over 100 workers assembling the mostly Taiwanese components, one-by-one, until the product is completed.

B. The Base Assembly Process

The base assembly process takes place in Taiwan and is described as follows:

1. Obtaining over 80 feet of steel tubes and sheet metal;
2. Cutting the steel tubes with an automated sawing machine into about 20 pieces;
3. Cutting holes in some of the steel tubes using automated equipment in machining workshop;
4. Bending some of the steel tubes into precise shapes using automated tube bending machines;
5. Attaching the separate steel and metal pieces into subassemblies in a welding workshop using automated welding machines;
6. Powder coating process to clean, heat, paint, and dry the parts;
7. Cleaning and heating through a variety of chemical baths and preparing the parts for painting;

8. Painting and drying; and
9. Assembling the final base product.

C. The Console Assembly Process

The console assembly process takes place in Taiwan. The Taiwanese components consist of a circuitboard assembly, plastic components, cable assemblies, and a keypad. The Chinese components consist of a power supply and power cord. The process is described as follows:

1. Wave soldering electronic components to a circuit board using surface mount technology;
2. Molding the plastic components by injecting Taiwanese material into a mold machine;
3. Assembling Taiwanese wires and connectors for the cable assemblies; and
4. Assembling the keypad.

Once complete, the consoles provide the Ellipticals with automated control by adjusting the motion of the hand and foot pedals; fluctuating resistance to the pedals to vary workouts; and tracking the time exercised, calories burned, and heart rate of the Elliptical's user.

Lastly, the final assembly brings together the base assembly and console assembly. The bases and consoles are then packaged separately and imported from Taiwan to Octane's U.S. warehouses.

D. The Assembly Process for the Options

You advise that three Options are available: stationary side steps; a "Cross Circuit Pro kit," consisting of adjustable dumbbells and stationary side steps; and an upper body lockout kit. Minor variations of the Options are available depending on the model of Elliptical machine they serve.

The stationary side steps Option is available for the PRO3700 and PRO4700 Ellipticals. It allows users to step onto platforms on each side of the machine. The stationary side steps undergo an assembly process similar to the base assembly process, where a Taiwanese factory takes steel and sheet metal through automated machines and conveyer systems to cut, bend, weld, clean, heat, paint, and then dry the final stationary side steps product. Under this Option, the stationary side steps product is shipped by itself from Taiwan to Octane's U.S. warehouses.

The Cross Circuit Pro kit Option provides the stationary side steps and the adjustable dumbbells in a package for the PRO3700, PRO4700, and LX8000 Ellipticals. Unlike the stationary side steps assembly process, the adjustable dumbbells are first made in China before being brought to Taiwan. In Taiwan, the adjustable dumbbells are packaged together with the stationary side steps as the Cross Circuit Pro kit. This kit is imported as one unit from Taiwan to Octane's U.S. warehouses.

The upper body lockout kit Option is available for the PRO370, PRO3700, and PRO4700 Ellipticals. It allows users to isolate lower body exercises by preventing upper body movements. The upper body lockout kit undergoes a similar assembly to the base and the stationary side steps assemblies. Here, a Taiwanese steel tube is processed through a Taiwanese supplier that also uses automated machines and conveyer systems to cut, bend, weld, clean, heat, paint, and then dry the final upper body lockout kit. This kit is imported from Taiwan as a unit to Octane's U.S. warehouses.

ISSUE:

What is the country of origin of the Ellipticals and the Options for the purpose of U.S. Government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 C.F.R. § 177.21 *et seq.,* which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 *et seq.*), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 C.F.R. § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. *See* 19 C.F.R. § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 C.F.R. § 25.403(c)(1). The Federal Acquisition Regulations defines "designated country end product" through the following relevant defintions:

Designated country end product means a WTO GPA country end product, an FTA country end product, a least develop country end product, or a Caribbean Basin country end product.

World Trade Organization Government Procurement Agreement (WTO GPA) country means any of the following countries: Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or United Kingdom. *WTO GPA country end product* means an article that—

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for

purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

48 C.F.R. § 25.003.

In determining whether the combining of parts or materials constitutes a substantial transformation, the determinative issue is the extent of operations performed and whether the parts lose their identity and become an integral part of the new article. *Belcrest Linens v. United States,* 573 F. Supp. 1149 (Ct. Int'l Trade 1983), *aff'd,* 741 F.2d 1368 (Fed. Cir. 1984). Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. Factors which may be relevant in this evaluation may include the nature of the operation (including the number of components assembled), the number of different operations involved, and whether a significant period of time, skill, detail, and quality control are necessary for the assembly operation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one which leaves the identity of the article intact, a substantial transformation has not occurred. *Uniroyal, Inc. v. United States,* 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd* 702 F. 2d 1022 (Fed. Cir. 1983). In a number of rulings (*e.g.* Headquarters Ruling Letter ("HQ") 732498, dated October 3, 1989, and HQ 732897, dated June 6, 1990), CBP stated, "merely packaging parts of a kit together does not constitute a substantial transformation."

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In HQ 735608, dated April 27, 1995 and HQ 559089, dated August 24, 1995, CBP has stated: "in our experience these inquiries are highly fact and product specific; generalizations are troublesome and potentially misleading."

In HQ 735368, dated June 30, 1994, CBP held that the country of origin of a bicycle assembled in Taiwan with components made in several countries was Taiwan. CBP stated that because the bicycle was assembled in Taiwan and one of the bicycle's most significant components, the frame, was made in Taiwan, the country of origin of the bicycle was Taiwan. Although the other components came from several different countries, when they were assembled together in Taiwan, they each lost their separate identity and became an integral part of a new article of commerce, a bicycle.

In the instant case, the assembly of the Ellipticals is comprised of two major assemblies, the base assembly and the console assembly. The base and console for each of the Ellipticals are produced through separate, extensive assembly processes that occur entirely in Taiwan. With regard to the gener-

alized base assembly, approximately 461 components, from which 450 originate from Taiwan, are transformed into the final base product by cutting, bending, welding, painting, and further assembling these components into bases for the Ellipticals. With regard to the generalized console assembly, approximately 33 components, from which 31 originate from Taiwan, are transformed into the final console product by wave soldering, molding, and further assembling these components into consoles for the Ellipticals. Though the base and console are shipped separately to Octane's U.S. warehouses, the base and console are first brought together in Taiwan for a complete machine test that ensures the machine is working properly. We find that under the described assembly process, the components from China and the U.S. lose their individual identities and become an integral part of the articles, the Ellipticals, possessing a new name, character and use. The assembly process that occurs in Taiwan is complex and meaningful, requiring the assembly of various components into a base and a console, which are then further assembled into the final Elliptical product for testing before shipment from Taiwan. Additionally, aside from the significant number of components that originate from Taiwan, the Elliptical's most significant components, the base and the console, were made from start to finish in Taiwan, which was an important consideration in HQ 735368. Moreover, the base and the console are combined for testing as the full Elliptical product in Taiwan. Thus, even though the base and the console are shipped separately from Taiwan to the U.S., the identity of the product as an Elliptical is already intact in Taiwan during testing, and before shipment to the U.S. where any later combination in the U.S. should be seen as a minimal assembly process that does not result in a substantial transformation.

Similarly, the assembly of two of the Options, the stationary side steps and the upper body lockout kit, are entirely produced in Taiwan from starting components to finished products. Conversely, the adjustable dumbbells are made into their final form in China before reaching Taiwan. We find that under the described assembly processes, the side stationary steps and the upper body lockout kit are products originating from Taiwan because their components, Taiwanese metals, and manufacturing processes wholly originate and take place in Taiwan. However, we find that the adjustable dumbbells originate from China since packaging the adjustable dumbbells with the stationary side steps in the Cross Circuit Pro kit in Taiwan does not substantially transform the adjustable dumbbells into a new article of commerce having a new name, character or use. As noted in HQ 732498 and HQ 732897, the repackaging of the adjustable dumbbells and the stationary side steps is not a substantial transformation because the separate items are already in their finished forms, not modified or affixed to each other, or combined in a permanent matter. Accordingly, the individual products which make up these Options retain their individual countries of origin, such that the adjustable dumbbells in the Cross Circuit Pro kit are not considered products of Taiwan, but rather products of China.

Therefore, based upon the information before us, we find that the country of origin of the Ellipticals, the stationary side steps, and the upper body lockout kit is Taiwan for U.S. Government procurement purposes. However, the packaging of the Cross Circuit Pro kit is not sufficient to change the country of origin for the adjustable dumbbells from China to Taiwan, and the adjustable dumbbells remain a product of China.

HOLDING:

The components that are used to manufacture the Ellipticals are substantially transformed as a result of the assembly operations performed in the Taiwan. Therefore, the country of origin of the Ellipticals for U.S. Government procurement purposes is Taiwan. The Options for the Ellipticals retain their respective country of Origin because repackaging these products into Option kits for the Ellipticals does not substantially transform these products from their already final product form. Therefore, the countries of origin for U.S. Government procurement purposes of the stationary side steps, adjustable dumbbells, and upper body lockout kits are Taiwan, China, and Taiwan, respectively.

Notice of this final determination will be given in the **Federal Register**, as required by 19 C.F.R. § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 C.F.R. § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 C.F.R. § 177.30, any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

GLEN E. VEREB,
Acting Executive Director,
Regulations and Rulings, Office of
International Trade.

[Published in the Federal Register, October 23, 2014 (79 FR 63416)]

ACCREDITATION OF INTERTEK USA, INC., AS A COMMERCIAL LABORATORY

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

ACTION: Notice of accreditation of Intertek USA, Inc., as a commercial laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 12, 2013.

EFFECTIVE DATE: The accreditation of Intertek USA, Inc., as commercial and laboratory became effective on April 12, 2013. The next triennial inspection date will be scheduled for April 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific

Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12, that Intertek USA, Inc., Road #901, KM 2.7, Bo. Camino Nuevo, Yabucoa PR 00767, has been accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–13	D4294	Sulfur in Petroleum Products by XRF.
27–02	D1298	Density, Relative Density or API Gravity of Crude Petroleum and Liquid Petroleum Products.
27–08	D86	Distillation of Petroleum Products at Atmospheric Pressure.
27–11	D445	Kinematic Viscosity of Transparent and Opaque Liquids.

Anyone wishing to employ this entity to conduct laboratory analyses should request and receive written assurances from the entity that it is accredited by the U.S. Customs and Border Protection to conduct the specific test requested. Alternatively, inquiries regarding the specific test this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

Dated: October 16, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services Directorate.

[Published in the Federal Register, October 22, 2014 (79 FR 63159)]

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 8, 2013.

EFFECTIVE DATE: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 8, 2013. The next triennial inspection date will be scheduled for August 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 16025 Jacintoport Blvd., Suite B, Houston, TX 77015, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Labo-

ratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–03	ASTM D–4006	Standard test method for water in crude oil by distillation.
27–48	ASTM D–4052	Standard test method for density and relative density of liquids by digital density meter.
27–13	ASTM D–4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–04	ASTM D–95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–46	ASTM D–5002	Standard test method for density and relative density.
27–08	ASTM D–86	Standard test method for distillation of petroleum products at atmospheric pressure.
27–11	ASTM D–445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).
27–54	ASTM D–1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27–06	ASTM D–473	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27–50	ASTM D–93	Standard test methods for flash point by Penske-Martens Closed Cup Tester.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to

CBPGaugersLabs@cbp.dhs.gov. Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: October 8, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.

[Published in the Federal Register, October 20, 2014 (79 FR 62652)]

ACCREDITATION AND APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of June 19, 2014.

EFFECTIVE DATE: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on June 19, 2014. The next triennial inspection date will be scheduled for June 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 2717 Maplewood Dr., Sulphur, LA 70663, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products

from the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature determination.
8	Sampling.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–08	ASTM D–86	Standard test method for distillation of petroleum products at atmospheric pressure.
27–58	ASTM D–5191	Standard test method for Vapor pressure of Petroleum products (Mini Method).
27–01	ASTM D–287	Standard test method for API Gravity of crude petroleum products and petroleum products (Hydrometer Method).
27–03	ASTM D–4006	Standard test method for water in crude oil by distillation.
27–13	ASTM D–4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–04	ASTM D–95	Standard test method for water in petroleum products and bituminous materials by distillation.
27–05	ASTM D–4928	Standard Test Method for Water in crude oils by Coulometric Karl Fischer Titration.
27–11	ASTM D–445	Standard test method for kinematic viscosity of transparent and opaque liquids (and calculations of dynamic viscosity).

CBPL No.	ASTM	Title
27–54	ASTM D–1796	Standard test method for water and sediment in fuel oils by the centrifuge method (Laboratory procedure).
27–06	ASTM D–473	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27–50	ASTM D–93	Standard test methods for flash point by Penske-Martens Closed Cup Tester.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.

Dated: October 8, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.

[Published in the Federal Register, October 20, 2014 (79 FR 62651)]

APPROVAL OF INTERTEK USA, INC., AS A COMMERCIAL GAUGER

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc., has been approved to gauge petroleum and petroleum products for customs purposes for the next three years as of July 15, 2014.

EFFECTIVE DATE: The accreditation and approval of Intertek USA, Inc., as a commercial gauger became effective on July 15, 2014. The next triennial inspection date will be scheduled for July 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202– 344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 1020 South Holland Sylvania Rd., Holland, OH 43528, has been approved to gauge petroleum and petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13. Intertek USA, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
2	Tank Calibration.
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
12	Calculations.
14	Natural Gas Fluids Measurement.
17	Maritime Measurement.

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific gauger service requested. Alternatively, inquiries regarding the specific gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories.

http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf

Dated: October 8, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.

[Published in the Federal Register, October 20, 2014 (79 FR 62653)]

ACCREDITATION AND APPROVAL OF SGS NORTH AMERICA, INC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that SGS North America, Inc., has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes for the next three years as of June 10, 2014.

EFFECTIVE DATE: The accreditation and approval of SGS North America, Inc., as a commercial gauger and laboratory became effective on June 10, 2014. The next triennial inspection date will be scheduled for June 2017.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that SGS North America, Inc., 3735 W. Airline Hwy., Reserve, LA 70084, has been approved to gauge and accredited to test petroleum and petroleum products, organic chemicals and vegetable oils for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. SGS North America, Inc., is approved for the following gauging procedures for petroleum and certain petroleum products set forth by the American Petroleum Institute (API):

API chapters	Title
3	Tank gauging.
7	Temperature Determination.
8	Sampling.
11	Physical Property.
12	Calculations.

SGS North America, Inc., is accredited for the following laboratory analysis procedures and methods for petroleum and certain petro-

leum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

CBPL No.	ASTM	Title
27–01	ASTM D–287	Standard test method for API Gravity of crude petroleum products and petroleum products (Hydrometer Method).
27–03	ASTM D–4006	Standard test method for water in crude oil by distillation.
27–06	ASTM D–473	Standard test method for sediment in crude oils and fuel oils by the extraction method.
27–13	ASTM D–4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf*

Dated: October 8, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services Directorate.

[Published in the Federal Register, October 20, 2014 (79 FR 62650)]

ACCREDITATION AND APPROVAL OF INTERTEK USAINC., AS A COMMERCIAL GAUGER AND LABORATORY

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

ACTION: Notice of accreditation and approval of Intertek USA, Inc., as a commercial gauger and laboratory.

SUMMARY: Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of August 30, 2013.

EFFECTIVE DATE: The accreditation and approval of Intertek USA, Inc., as commercial gauger and laboratory became effective on August 30, 2013. The next triennial inspection date will be scheduled for August 2016.

FOR FURTHER INFORMATION CONTACT: Approved Gauger and Accredited Laboratories Manager, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1331 Pennsylvania Avenue NW., Suite 1500N, Washington, DC 20229, tel. 202–344–1060.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 801 W. Orchard Dr., Suite #5, Bellingham, WA 98225, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13. Intertek USA, Inc. is approved for the following gauging procedures for petroleum and certain petroleum products per the American Petroleum Institute (API) Measurement Standards:

API chapters	Title
2	Tank calibration.
3	Tank gauging.
7	Temperature determination.
8	Sampling.
11	Physical property.
12	Calculations.
17	Maritime measurement.

Intertek USA, Inc. is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Mate-

rials (ASTM):

CBPL No.	ASTM	Title
27–05	ASTM D 4928	Standard test method for water in crude oils by Coulometric Karl Fischer Titration.
27–06	ASTM D 473	Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method.
27–07	ASTM D 4807	Standard Test Method for Sediment in Crude Oil by Membrane Filtration.
27–13	ASTM D 4294	Standard test method for sulfur in petroleum and petroleum products by energy-dispersive x-ray fluorescence spectrometry.
27–46	ASTM D 5002	Standard test method for density and relative density of crude oils by digital density analyzer.
N/A	ASTM D 4007	Standard test method for water and sediment in crude oil by the centrifuge method (Laboratory procedure).

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *cbp.labhq@dhs.gov.* Please reference the Web site listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/sites/default/files/documents/gaulist_3.pdf.*

Dated: October 9, 2014.

IRA S. REESE,
Executive Director,
Laboratories and Scientific Services
Directorate.

[Published in the Federal Register, October 20, 2014 (79 FR 62650)]

MODIFICATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF CERTAIN AQUATIC TRAINING SHOES

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

ACTION: Notice of modification of a ruling letter and revocation of treatment relating to tariff classification of the "Model Mako" aquatic training shoes.

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 U.S. Customs and Border Protection (CBP) is modifying one ruling letter relating to the tariff classification of the "Model Mako" aquatic training shoes under the Harmonized Tariff Schedule of the United States (HTSUS). CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 48, No. 29, on July 23, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 5, 2015.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0347.

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, as amended (19 U.S.C. §1625 (c)(1)), a notice was published in the *Customs Bulletin*, Volume 48, No. 29, on July 23, 2014, proposing to modify Headquarters Ruling Letter (HQ) H012677, dated February 15, 2008, in which CBP determined that the subject aquatic training shoes were classified in subheading 6404.11.90, HTSUS, as "sports footwear". No comments were received in response to this notice.

As stated in the proposed notice, this action will cover any rulings on the subject 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 rulings identified above. 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 CBP during the comment period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625 (c)(2)), 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 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 this final decision.

Pursuant to 19 U.S.C. §1625(c)(1), CBP is modifying HQ H012677, in order to reflect the proper classification of the aquatic training shoes under subheading 6404.11.90 as "tennis shoes, basketball shoes, gym shoes, training shoes and the like," according to the analysis contained in HQ H032829, set forth as an attachment to this document.

In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after publication in the *Customs Bulletin.*

Dated: September 8, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H032829
September 8, 2014
CLA-2 OT: RR: CTF: TCM H032829 EGJ
CATEGORY: Classification
TARIFF NO.: 6404.11.90

JUDITH HAGGIN
J.L. HAGGIN & ASSOCIATES CO.
1100 S.W. SIXTH AVE.
SUITE 212
PORTLAND, OR 97204

RE: Modification of HQ H012677, dated February 15, 2008; Classification of Aquatic Training Shoes

DEAR MS. HAGGIN:

This is in regard to Headquarters Ruling Letter (HQ) H012677, dated February 15, 2008, regarding the classification under the Harmonized Tariff Schedule of the United States (HTSUS) of aquatic training shoes. In HQ H012677, U.S. Customs and Border Protection (CBP) affirmed New York Ruling Letter (NY) L85922, dated August 2, 2005, which classified the aquatic training shoes under subheading 6404.11.90, HTSUS. We have reviewed the analysis set forth in HQ H012677 and have determined that the analysis is incorrect. While we agree that the aquatic shoes are classifiable under subheading 6404.11.90, HTSUS, the correct provision under subheading 6404.11, HTSUS, is "tennis shoes, basketball shoes, gym shoes, training shoes and the like," and not "sports footwear."

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, notice of the proposed revocation was published on July 23, 2014, in the *Customs Bulletin*, Volume 48, No. 29. CBP received no comments in response to this notice.

FACTS:

The subject articles, identified as "Model Mako, Style AQx1001," are athletic-type shoes designed for water fitness. They are sold by the importer, AQx, Inc. (AQx). AQx markets the shoes for use in vigorous activities such as running in water or aqua aerobics. The following is an image of the shoes:

The shoes have a predominately textile material upper surface that does not cover the ankle. They also have a rubber/plastics external surface area, structural reinforcements at the toe and along the sides and eyelet stays at the back. The shoes also feature a functional lace closure complete with an adjustable plastic cinch stop to tighten and hold the shoe on the foot.

The shoes have a cemented-on, unit molded, rubber/plastic material bottom/sole that overlaps the upper surface. There are three, semi-rigid rubber/plastic wing-like protrusions, or "gills," on both sides of the shoe's upper external surface. These "gills" provide resistance when exercising in water. The bottoms of the shoes contain small drain holes for water to drain out of the shoes after the wearer exits the water. The shoes are valued at over $12 per pair.

ISSUE:

Are the aquatic training shoes classifiable as "sports footwear" or as "tennis shoes, basketball shoes, gym shoes, training shoes and the like" under subheading 6404.11, HTSUS?

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs 1 through 5.

The HTSUS provisions under consideration are as follows:

6404	Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials:	
		Footwear with outer soles of rubber or plastics:
6404.11		Sports footwear; tennis shoes, basketball shoes, gym shoes, training shoes and the like:
		Other:
6404.11.90		Valued over $12/pair

* * *

Subheading Note 1 to Chapter 64 provides that:

1. For the purposes of subheadings 6402.12, 6402.19, 6403.12, 6403.19 and 6404.11, the expression "*sports footwear*" applies only to:

(a) Footwear which is designed for a sporting activity and has, or has a provision for the attachment of spikes, sprigs, cleats, stops, clips, bars or the like;

(b) Skating boots, ski-boots and cross-country ski footwear, snowboard boots, wrestling boots, boxing boots and cycling shoes.

Additional U.S. Note 2 to Chapter 64 provides that:

2. For the purposes of this chapter, the term "*tennis shoes, basketball shoes, gym shoes, training shoes and the like*" covers athletic footwear other than sports footwear (as defined in subheading note 1 above), whether or not principally used for such athletic games or purposes.

* * *

Applying GRI 6, the issue is whether the shoes are identifiable as "sports footwear" or as "tennis shoes, basketball shoes, gym shoes, training shoes and the like" under subheading 6404.11, HTSUS. Subheading Note 1 to Chapter 64 states that "'*sports footwear'* applies only to...," which conveys an intent to reasonably limit footwear classified as "sports footwear." CBP has consistently held that the definition of "sports footwear" in Subheading Note 1 to Chapter 64 should be interpreted narrowly. *See* HQ 956942, dated November 7, 1994; HQ 963462, dated November 24, 2000 and NY H87213, dated February 22, 2002.

The terms "spikes, sprigs, cleats, stops, clips [and] bars" are not defined in the HTSUS or its legislative history. When, as in this case, a tariff term is not defined by the HTSUS or its legislative history, "the term's correct meaning is its common meaning." *Mita Copystar Am. v. United States*, 21 F.3d 1079, 1082 (Fed. Cir. 1994). The common meaning of a term used in commerce is presumed to be the same as its commercial meaning. *Simod Am. Corp. v. United States*, 872 F.2d 1572, 1576 (Fed. Cir. 1989). To ascertain the common meaning of a term, a court may consult "dictionaries, scientific authorities, and other reliable information sources" and "lexicographic and other materials." *C.J. Tower & Sons v. United States*, 673 F.2d 1268, 1271 (CCPA 1982); *Simod*, 872 F.2d at 1576.

The Complete Footwear Dictionary, 172 (2nd ed. 2000), defines a spike as "a short, sharp metal piece protruding from the bottom of the shoe sole, used for traction on track shoes. Also used on some shoes or boots for mountain climbing or walking on slippery surfaces." It defines cleats as "a knob or spike on the sole for increased traction; arranged in groups or patterns." *Id*. at 34. *The Complete Footwear Dictionary* also defines a clip as "the tightness of shoe fit on the last around the topline." *Id.* at 34. A shoe's last is the plastic, wood or metal form over which the shoe is made to conform to the prescribed shape and size of the shoe. *Id*. at 98. A bar is defined as "a piece of material of any of various shapes or thicknesses, used for shoe modifications or as an orthotic to alter foot tread or gait." *Id.* at 9. *The Complete Footwear Dictionary* shows diagrams of different shoe bars attached to shoe soles.

A sprig and a stop are not defined in *The Complete Footwear Dictionary.* The Merriam-Webster Online Dictionary (2014) defines a sprig as "a small headless nail." *Id. available at* www.merriam-webster.com. It also defines a stop as "a device for arresting or limiting motion." *Id.*

CBP's interpretation of the terms "spikes, sprigs, cleats, stops, bars or the like" in regards to "sports footwear" has generally included projections attached to, or molded into the soles of sports footwear to provide traction during sporting activities such as golf, field sports (baseball, soccer, American football, rugby etc.) or track & field events. In addition, CBP has also included crampons and similar attachments for rock/ice-climbing boots in the definition of these terms.

CBP has determined that outdoor recreational footwear suitable for everyday walking is not "sports footwear." *See* HQ 956942 (CBP found that a steel shank wrapped in canvas in the sole of a horseback riding shoe did not satisfy the definition of sports footwear). According to HQ 963462 and NY H87213 respectively, golf shoes with plastic nubs instead of cleats and football shoes with short flat cleats instead of long sharp cleats do not meet the definition of sports footwear.

The subject aquatic shoes have gills on the sides and drain holes on the bottoms. Neither of these elements provides traction during sporting activities. The gills and drain holes are not similar to spikes, sprigs, cleats, stops bars or the like. As such, the aquatic training shoes cannot be classified as sports footwear under subheading 6404.11, HTSUS.

The aquatic training shoes are specifically designed for athletic training in the water. The gills provide resistance for runners training in the water, as well as adding resistance for participants in water aerobics. As such, the shoes are training shoes and are classifiable as "tennis shoes, basketball shoes, gym shoes, training shoes and the like" under subheading 6404.11, HTSUS.

HOLDING:

By application of GRIs 1 and 6, the subject aquatic training shoes are classifiable under subheading 6404.11.90, HTSUS, which provides for, in pertinent part: "Footwear with outer soles of rubber, plastics, leather or composition leather and uppers of textile materials: footwear with outer soles of rubber or plastics: … tennis shoes, basketball shoes, gym shoes, training shoes and the like: other: valued over $12/pair." The 2014 column one, general rate of duty is 20 percent *ad valorem*.

Duty rates are provided for convenience only 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:

HQ H012677, dated February 15, 2008, is hereby modified.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

NOTICE OF CORRECTION TO THE NOTICE OF REVOCATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO THE TARIFF CLASSIFICATION OF WOODEN SHELVING UNITS WITH BASKETS

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

ACTION: Correction of notice of revocation of ruling letters and revocation of treatment relating to the tariff classification of wooden shelving units with baskets.

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 U.S. Customs and Border Protection (CBP) is correcting a notice of revocation of ruling letters and revocation of treatment concerning the tariff classification of wooden shelving units with baskets under the Harmonized Tariff Schedule of the United States (HTSUS). The notice being corrected was published on August 6, 2014, in the *Customs Bulletin and Decisions,* Vol. 48, No. 31. CBP is correcting the notice of revocation because it contained a clerical error.

EFFECTIVE DATE: Immediately.

FOR FURTHER INFORMATION CONTACT: Beth Jenior, Tariff Classification and Marking Branch: (202) 325–0371.

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) ("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 U.S. Customs and Border Protection (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

public 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, CBP published a notice of revocation of ruling letters and revocation of treatment relating to the tariff classification of wooden shelving units with baskets on August 6, 2014, in the *Customs Bulletin and Decisions,* Vol. 48, No. 31 (the "Notice"). However, in the second to last sentence under "Supplementary Information," the Notice contained the following clerical error concerning the tariff classification of the subject merchandise:

> Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N218739, NY N117616, NY N087304, NY N084602, and NY N063740, in order to reflect the proper classification of wooden shelving units with baskets under 9403.50, HTSUS, which provides for "Other furniture and parts thereof: wooden furniture of a kind used in the bedroom …", according to the analysis contained in HQ H240196, set forth as an attachment.

The last sentence of under "Supplementary Information" is corrected to state the following:

> Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N218739, NY N117616, NY N087304, NY N084602, and NY N063740, in order to reflect the proper classification of wooden shelving units with baskets under 9403.60.80, HTSUS, which provides for "Other furniture and parts thereof: Other wooden furniture…", according to the analysis contained in HQ H240196, set forth as an attachment.

Accordingly, pursuant to 19 U.S.C. § 1625(c)(1), CBP is correcting the clerical error in the Notice by providing the foregoing corrected text.

Dated: November 5, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

REVOCATION OF A RULING LETTER AND REVOCATION OF TREATMENT RELATING TO THE CLASSIFICATION OF A FRONT FRAME FOR A WIND TURBINE GENERATOR SET

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 a front frame for a wind turbine generator set

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 one ruling letter relating to the classification of a front frame for a wind turbine generator set. Similarly, CBP is also revoking any treatment previously accorded by CBP to substantially identical transactions. Notice of the proposed action was published in the *Customs Bulletin*, Vol. 48, No. 29, on July 23, 2014. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 5, 2015

FOR FURTHER INFORMATION CONTACT: Aaron Marx, Tariff Classification and Marking Branch: (202) 325–0195.

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, as amended (19 U.S.C. §1625 (c)(1)), this notice advises interested parties that CBP is revoking one ruling letter pertaining to the classification of a front frame for a wind turbine generator set. Although in this notice, CBP is specifically referring to the revocation of New York Ruling Letter (NY) N090476, dated January 26, 2010, 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 rulings identified above. 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 have advised CBP during this notice period.

Similarly, pursuant to section 625 (c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625 (c)(2)), CBP is revoking any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should have advised 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 notice of this action.

In NY N090476, CBP determined that the "front frame" (a cast iron further machined piece which supports the gear box, main shaft assembly, yaw motors, support columns, rotation counter, and rotor locking system) designed to be mounted within the nacelle, was classified in heading 8503, HTSUS, specifically under subheading 8503.00.95, HTSUS, which provides for "Parts suitable for use solely or principally with machines of heading 8501 or 8502: Other: Other: Other".

It is now CBP's position that the instant "front frame" is properly classified under heading 8412, HTSUS, specifically under subheading 8412.90.90, HTSUS, which provides for: "Other engines and motors, and parts thereof: Parts: Other".

Pursuant to 19 U.S.C. §1625(c)(1), CBP is revoking NY N090476, and to revoking or modifying any other ruling not specifically identified, in order to reflect the proper classification of the instant front frame, according to the analysis contained in proposed Headquarters Ruling Letter (HQ) H169057, 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), the attached rulings will become effective 60 days after publication in the *Customs Bulletin*.

Dated: September 4, 2014

GREG CONNOR
FOR
MYLES B. HARMON
Director
Commercial and Trade Facilitation Division

Attachment

HQ H169057
September 4, 2014
CLA–2 OT:RR:CTF:TCM H169057 AMM
CATEGORY: Classification
TARIFF NO.: 8412.90.90

MR. GREGORY JOHN BREAULT
IMPORT/EXPORT COMPLIANCE MANAGER
GAMESA WIND
400 GAMESA DRIVE
FAIRHILLS, PA 19030

RE: Reconsideration of New York Ruling Letter N090476; Classification of a wind turbine "Front Frame" from China

DEAR MR. BREAULT,

This is in reference to New York Ruling Letter (NY) N090476, dated January 26, 2010, issued to you on behalf of Gamesa Wind, regarding the classification by U.S. Customs and Border Protection (CBP) of a wind turbine components identified as a "Front Frame" or "Mainframe," under the Harmonized Tariff Schedule of the United States (HTSUS). We have reviewed NY N090476, and found it to be incorrect with respect to the classification of the Front Frame. For the reasons set forth below, we are revoking that ruling.

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, 2186 (1993), notice of the proposed revocation of the above-identified ruling and revocation of treatment relating to the tariff classification of the instant "Front Frame" was published on July 23, 2014, in the *Customs Bulletin*, Volume 48, Number 29. In that notice, CBP proposed that the instant product was classified in heading 8412, HTSUS. No comments were received on this proposal.

FACTS:

In NY N090476, CBP described the instant merchandise in the following manner:

> This item is a cast iron further machined piece that acts as the base/floor of a wind turbine generator set. The "Mainframe" is mounted within the nacelle housing of a wind turbine. This base unit, attaches to the upper most portion of the tower via its "rotation center". Within the nacelle housing the mainframe (front frame) supports the gear box, main shaft assembly, yaw motors, support columns, rotation counter, and rotor locking system. It also attaches to a rear frame assembly that is used to support the generator and control cabinets.

* * *

In NY N090476, CBP classified the instant merchandise under heading 8503, HTSUS, specifically under subheading 8503.00.95, HTSUS, which provides for: "Parts suitable for use solely or principally with the machines of heading 8501 or 8502: Other: Other".

ISSUE:

What is the proper classification of the instant Front Frame under the HTSUS?

LAW AND ANALYSIS:

The 2014 HTSUS provisions at issue are:

8412	Other engines and motors, and parts thereof:
8412.90	Other:
8412.90.90	Other

8503	Parts suitable for use solely or principally with the machines of heading 8501 or 8502:
	Other:
8503.00.95	Other

Note 2 to Section XVI (which covers Chapters 84 and 85), HTSUS, states, in pertinent part:

> Subject to note 1 to this section, note 1 to chapter 84 and to note 1 to chapter 85, parts of machines (not being parts of the articles of heading 8484, 8544, 8545, 8546 or 8547) are to be classified according to the following rules:
>
> (a) Parts which are goods included in any of the headings of chapter 84 or 85 (other than headings 8409, 8431, 8448, 8466, 8473, 8487, 8503, 8522, 8529, 8538 and 8548) are in all cases to be classified in their respective headings;
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate.

* * *

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs), constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of the headings. It is CBP's practice to consult, whenever possible, the terms of the ENs when interpreting the HTSUS. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The EN to heading 84.12 states, in pertinent part:

(D) WIND ENGINES (WINDMILLS)

This group includes all power units (wind engines or wind turbines), which directly convert into mechanical energy the action of the wind on the blades (often of variable pitch) of a propeller or rotor.

Usually mounted on a fairly tall metal pylon, the propellers or rotors have an arm perpendicular to their plane, forming a vane, or some similar device for orientating the apparatus according to the direction of the wind. The motive force is generally transmitted by reduction gearing through a vertical shaft to the power take-off shaft at ground level. Some wind motors ("depression motors") have hollow blades in which a pressure reduction is developed by rotation, and is transmitted to the ground by airtight conduits to drive a small reaction turbine.

* * *

Electric generator units composed of wind motors mounted integrally with an electric generator (including those for operation in aircraft slipstreams) are excluded (heading 85.02).

* * *

The EN to heading 85.02 states, in pertinent part:

(I) ELECTRIC GENERATING SETS

The expression "generating sets" applies to the combination of an electric generator and any prime mover other than an electric motor (e.g., hydraulic turbines, steam turbines, wind engines, reciprocating steam engines, internal combustion engines). Generating sets consisting of the generator and its prime mover which are mounted (or designed to be mounted) together as one unit or on a common base (see the General Explanatory Note to Section XVI), are classified here provided they are presented together (even if packed separately for convenience of transport).

* * *

PARTS

Subject to the general provisions regarding the classification of parts (see the General Explanatory Note to Section XVI), parts of the machines of this heading are classified in heading 85.03.

In NY N090476, CBP classified a "Front Frame." It is a cast iron further machined piece that acts as the base/floor of a wind turbine generator set, and is mounted within the nacelle housing of a wind turbine. It supports the weight of the gear box, main shaft assembly, yaw motors, support columns, rotation counter, and rotor locking system. It also attaches to a rear frame assembly that supports the weight of the generator. CBP classified this item under heading 8503, HTSUS, which provides for "Parts suitable for use solely or principally with machines of heading 8501 or 8502".

The courts have considered the nature of "parts" under the HTSUS and two distinct though not inconsistent tests have resulted. *See Bauerhin Technologies Limited Partnership, & John V. Carr & Son, Inc. v. United States*, 110 F.3d 774, 779. The first, articulated in *United States v. Willoughby Camera Stores*, 21 C.C.P.A. 322 (1933) requires a determination of whether the imported item is "an integral, constituent, or component part, without which the article to which it is to be joined, could not function as such article." *Bauerhin*, 110 F.3d at 778 (quoting *Willoughby Camera*, 21 C.C.P.A. 322,

324). The second, set forth in *United States v. Pompeo*, 43 C.C.P.A. 9 (1955), states that an imported item "dedicated solely for use" with another article is a part of that article provided that, "when applied to that use," the article will not function without it. *Pompeo*, 43 C.C.P.A. 9, 14. Under either line of cases, an imported item is not a part if it is "a separate and distinct commercial entity." *ABB, Inc. v. United States*, 28 Ct. Int'l Trade 1444, 1452–53 (2004); *Bauerhin*, 100 F. 3d at 1452–32. "A subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole." *Mitsubishi Electronics America v. United States*, 19 CIT 378, 383 n.3 (Ct. Int'l. Trade 1995).

A complete wind turbine is classified under heading 8502, HTSUS, as an electric generating set. *See* NY N099779, dated April 20, 2010; NY J84838, dated May 30, 2003; NY I83359, dated July 11, 2002. A generating set is made from a combination of a prime mover (in this case, a wind engine) and a generator. *See* EN(I) to 85.02; EN(D) to 84.12.

In NY N058766, dated May 26, 2009, CBP considered the classification of wind turbine nacelle assemblies without generators, imported both with and without the blade assemblies. The nacelle assemblies consisted of a housing, metal frame, gear box, shafts, brake system, yaw system, and controllers. CBP stated that "The gears, shafts, brake, and yaw drive and motor, together with the blade assembly, operate as the engine of the completed wind turbine." In one scenario, a nacelle assembly was imported without its generator, blades, hub, and nose cone. CBP classified it under subheading 8412.90.90, HTSUS, which provides for "Other engines and motors, and parts thereof: Parts: Other". In a second scenario, a nacelle assembly was imported without its generator, but with the blades, hub, and nose cone. CBP found that this scenario represented a complete wind engine, and classified it under subheading 8412.80.90, HTSUS, which provides for "Other engines and motors, and parts thereof: Other engines and motors: Other".

CBP has also classified certain other individual components contained inside the nacelle housing as parts of a wind engine. *See* NY N112600, dated July 27, 2010 (a mechanical brake-hydraulic unit, which is a nacelle assembly component located behind the gear box as a part of a wind engine, was classified under subheading 8412.90.90, HTSUS); NY N138276, dated December 16, 2010 (a bedplate cast, used inside a nacelle assembly to support the yaw drive, brakes, rotor shaft, and gear box, as a part of a wind engine, was classified under subheading 8412.90.90, HTSUS).

Heading 8412, HTSUS, provides for "Other engines and motors, and parts thereof". As discussed above, a complete wind turbine is composed of two components: the wind engine and the electric generator. When the electric generator is missing, the remainder of the assembly is classified as a wind engine. *See* NY N058766. The function of the wind engine is to capture the kinetic energy of the wind, and convert that energy into rotational mechanical energy. *See* EN(D) to 84.12. As discussed above, the instant Front Frame is dedicated solely for use inside the nacelle of a wind turbine, to support the weight of certain other components. These individual components work together to transmit the rotational mechanical energy from the blades to the generator. If the Front Frame were removed, there would be no support or alignment for these parts. The wind engine would no longer be able to

perform its intended function, which is to convert wind energy into electricity and to supply that mechanical energy to the electric generator. The Front Frame is a "part" of a wind engine within the meaning of the term given by the courts in *Bauerhin*. Therefore, the Front Frame is properly classified under heading 8412, HTSUS, as a part of a wind engine. *See* Note 2(b) to Section XVI, HTSUS.

In NY N090476, CBP classified the instant product under heading 8503, HTSUS, as a part of a complete wind turbine. However, a complete wind turbine is comprised of two parts, the wind engine and the generator. As stated in *Mitsubishi*, "[a] subpart of a particular part of an article is more specifically provided for as a part of the part than as a part of the whole." *Mitsubishi*, 19 CIT, at 383 n.3. The instant front frame is a subpart of the complete wind turbine, in that it is a part of the wind engine (which is itself a part of the wind turbine). As such, it is not provided for under heading 8503, HTSUS.

The instant front frame is properly classified under heading 8412, HTSUS, by operation of GRI 1 and Note 2(b) to Section XVI. Specifically, it is classified under subheading 8412.90.90, HTSUS, which provides for: "Other engines and motors, and parts thereof: Parts: Other".

HOLDING:

By application of GRI 1 and Note 2(b) to Section XVI, HTSUS, the instant Front Frame is classified under heading 8412, HTSUS, specifically under subheading 8412.90.90, HTSUS, which provides for: "Other engines and motors, and parts thereof: Parts: Other". The column one, general rate of duty is free.

Duty rates are provided for convenience only 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:

New York Ruling Letter N090476, dated January 26, 2010, is hereby REVOKED in accordance with the above analysis. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the Customs Bulletin.

Sincerely,

GREG CONNOR

FOR

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

19 CFR PART 177

Revocation of a Ruling Letter and Revocation of Treatment Relating to Classification of Dental Lamps

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 dental lamps.

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 ("CPB") is revoking a ruling concerning the classification of dental lamps, under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, CPB is revoking any treatment previously accorded by CPB to substantially identical transactions. Notice of the proposed revocation was published on July 30, 2014, in Volume 48, Number 30, of the *CUSTOMS BULLETIN*. No comments were received in response to the proposed notice.

EFFECTIVE DATE: This revocation is effective for merchandise entered or withdrawn from warehouse for consumption on or after January 5, 2015.

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 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 (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 48, No. 30, on July 30, 2014, proposing to revoke Headquarter's Ruling Letter HQ 965968, dated December 16, 2002, and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response 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 proposing to revoke any treatment previously accorded by CBP to substantially identical transactions. Any person involved in substantially identical transactions should advise CBP during this notice period. An importer's failure to advise CBP of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In HQ 965968, CBP classified the merchandise in subheading 9405.40.60, HTSUS, the provision for "Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included: Other electrical lamps and lighting fittings: Other." The referenced ruling is incorrect because the merchandise is a dental instrument under *Trumpf Medical Systems, Inc. v. United States*, 753 F. Supp. 2d 1297 (Ct. Int'l Trade 2010), classified in subheading 9018.49.80, the provision for "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electromedical apparatus and sight-testing instruments; parts and accessories thereof: Other: Other."

Pursuant to 19 U.S.C. 1625(c)(1), CBP is revoking HQ 965968, 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) H073927, 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: September 15, 2014

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Attachment

HQ H178917
September 15, 2014
CLA-2 OT:RR:CTF:TCM H178917 ARM
CATEGORY: Classification
TARIFF NO.: 9018.49.80

MR. JACK D. MLAWSKI
GALVIN & MLAWSKI
470 PARK AVENUE SOUTH
SUITE 200 – SOUTH TOWER
NEW YORK, NY 10016–6819

RE: Revocation of HQ 965968; classification of dental lamps

DEAR MR. MLAWSKI:

This is in reference to Headquarters Ruling Letter (HQ) 965968, issued to you on behalf of your client, Takara Belmont USA, on December 16, 2002, by Customs and Border Protection (CBP), affirming our decision in New York Ruling Letter (NY) I81051, dated May 13, 2002. In both rulings, CBP classified the "X-Calibur-HLU" dental light and the "Clesta Dental Lights," Models 501 (AL-501T), 2530 and 2535, in subheading 9405.40.60, Harmonized Tariff Schedule of the United States (HTSUS), as other lamps and lighting fittings. In light of the recent Court of International Trade (CIT) decision in *Trumpf Medical Systems, Inc. v. United States*, 753 F. Supp. 2d 1297 (Ct. Int'l Trade 2010), we are revoking this decision.

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 48, No. 30, on July 30, 2014, proposing to revoke HQ 965968 and proposing to revoke any treatment accorded to substantially identical transactions. No comments were received in response to the proposed notice.

FACTS:

In HQ 965968, the subject merchandise, was 4 models of dental lamps: the "X-Calibur-HLU" dental light and the "Clesta Dental Lights," Models 501 (AL-501T), 2530 and 2535.

The "X-Calibur-HLU" dental light was described as a dental halogen lamp that is designed for mounting onto a dentist chair. The lamp features a two-piece adjustable aluminum arm that measures approximately 43 inches long. One end of the arm is inserted into the aluminum housing of the transformer with a heavy gauge unfinished light cord and fitted bottom socket for accommodating the steel pole through its adapter. The other end of the arm is affixed to an adjustable aluminum bar, measuring approximately six inches in length with a U-shaped holder for the bulb's housing. This housing measures approximately 10 1/2 inches wide. It has a plastic slotted body with lateral handles, a quartz halogen bulb with a cylinder-like metal protector, a concave glass reflector, plastic frontal lens and plastic on/off switch. The lamp is imported without the pole which attaches it to a dental delivery system.

The three models of "Clesta Dental Lights," were described as being similar in most respects to the X-Calibur-HLU except that all three Clesta lights

incorporate a touchless activation switch allowing the dentist to turn the light on and off without physically touching the lamp. Furthermore, the model 501 (AL-501T) is imported without a pole and it is designed to be attached, via the pole, to the delivery system. Clesta models 2530 and 2535 are imported with poles, which are designed to attach directly to the dental chair.

LAW AND ANALYSIS:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation (GRIs). 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 GRIs may then be applied.

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

The HTSUS provisions under consideration are as follows:

* * *

9405	Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere specified or included:
9405.40	Other electrical lamps and lighting fittings:
9405.40.60	Other.
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof:
9018.49	Other:
9018.49.80	Other.

The Chapter 90 legal notes state, in pertinent part, the following:

1. This chapter does not cover:

(h) Searchlights or spotlights of a kind used for cycles or motor vehicles (heading 8512); portable electric lamps of heading 8513; cinematographic sound recording, reproducing or re-recording apparatus (heading 8519 or 8520); sound-heads (heading 8522); still image video cameras, other video camera recorders and digital cameras (heading 8525); radar apparatus,

radio navigational aid apparatus and radio remote control apparatus (heading 8526); numerical control apparatus (heading 8537); sealed beam lamp units of heading 8539; optical fiber cables of heading 8544;

(ij) Searchlights or spotlights of heading 9405;

EN 90.18 states, in pertinent part, the following:

INSTRUMENTS AND APPLIANCES FOR HUMAN MEDICINE OR SURGERY

This group includes:

******

(r) Lamps which are specially designed for diagnostic, probing, irradiation, etc. purposes. Torches, such as those in the shape of a pen are excluded (heading 8513) as are other lamps which are not clearly identifiable as being for medical or surgical use (heading 94.05).

EN 94.05 states, in pertinent part, the following:

(I) LAMPS AND LIGHTING FITTINGS, NOT ELSEWHERE SPECIFIED OR INCLUDED Lamps and lighting fittings of this group can be constituted of any material (excluding those materials described in Note 1 to Chapter 71) and use any source of light (candles, oil, petrol, paraffin (or kerosene), gas, acetylene, electricity, etc.). Electrical lamps and lighting fittings of this heading may be equipped with lamp-holders, switches, flex and plugs, transformers, etc., or, as in the case of fluorescent strip fixtures, a starter or a ballast.

This heading covers in particular: . . . .

(3) Specialised lamps, e.g.: darkroom lamps; machine lamps (presented separately); photographic studio lamps; inspection lamps (other than those of heading 85.12); non-flashing beacons for aerodromes; shop window lamps; electric garlands (including those fitted with fancy lamps for carnival or entertainment purposes or for decorating Christmas trees).

EN 94.05 states, in pertinent part, the following:

This heading also excludes:

*****

(1) Medical diagnostic, probing, irradiation, etc., lamps (heading 90.18).

The issue in HQ 965968 was whether the dental lamps were classified in heading 9402, as dental furniture, or in heading 9405, as lamps. That ruling relied on the EN to heading 94.02 which states:

Parts of the foregoing articles are classified in this heading **provided** they are recognisable as such parts.

These parts include:

…

(2) Certain clearly identifiable parts of dentists' chairs (e.g., head-rests, back pieces, foot-rests, arm-rests, elbow-rests, etc.).

*****

> (12) "Dentists' chairs …with mechanisms (usually telescopic) for raising as well as tilting and sometimes turning on a centre column, whether or not fitted with equipment such as lighting fittings."

Also, the ENs to heading 9018 state, in pertinent part, the following:

> The following also fall in this heading:
>
> (ii) **Complete dental equipment on its base** (stationary or mobile unit). The main usual features are a frame carrying a compressor, a transformer, a control panel and other electrical apparatus; the following are also often mounted on the unit: swivel arm drill, spittoon and mouth rinser, electic heater, hot air insufflator, spray, cautery instrument tray, diffused lighting, shadowless lamp, fan, diathermic apparatus, X-ray apparatus, etc.
>
> ***
>
> (vi) **Dentist's chairs incorporating dental equipment** or any other dental appliances classifiable in this heading.

The EN states that heading 9018, HTSUS, does not include dental chairs not incorporating dental appliances of this heading, as they fall into heading 9402 whether or not fitted with equipment such as lighting fittings. Further, the EN provides, in part:

> …the heading **excludes** certain items of dental equipment mentioned in paragraph (ii) above, when they are presented separately….

Since dental chairs with light fittings were included in heading 9402, and complete dental consoles including dental chairs with light fittings were included in heading 9018, HTSUS, but lamps themselves were not explicitly described as furniture or dental equipment, we concluded that they were classifiable in their specific heading, as lamps of heading 9405 in accordance with GRI 1 and Additional U.S. Rule of Interpretation 1(c) [1], because the specific provision for the good prevails.

Since that time, the Court of International Trade has decided *Trumpf Medical Systems, Inc. v. United States, 753 F. Supp. 2d 1297* (2010). In that case, overhead lights specified for the surgical theater were held to be instruments for the surgical sciences classified in heading 9018, HTSUS. The court noted the six characteristics of the surgical lights at issue: – High Illumination/Brightness, Color Rendition of Tissue, Light Field Diameter, Shadow Reduction, Limited Heat/Irradiance and Depth of Illumination. *Id.* at 1299. Given these special characteristics of the surgical light, the court found that the merchandise met the terms of heading 9018, HTSUS. Specifically, the court found that the lights met the broad dictionary definition of an "instrument or appliance". The court dismissed evidence of alternative use and found that the surgical lights were used in the vast majority of cases only in professional practice in accordance with EN 90.18. Lastly, the court defined "diagnostic" broadly, finding that by illuminating the field of interest

[1] Additional U.S. Rule of Interpretation 1 (c) states the following: "In the absence of special language or context which otherwise requires-- . . . a provision for parts of an article covers products solely or principally used as a part of such articles but a provision for "parts" or "parts and accessories" shall not prevail over a specific provision for such part or accessory;"

on a patient, physicians used the lights to identify signs and symptoms of disease. This function met the definition of "diagnostic" even though the lights did not technically irradiate or probe (ENs 90.18(r) and 94.05(l)). *Id.*

Generally, dental lamps contain some of the same characteristics as those in the *Trumpf* case. They have High Illumination/Brightness, Light Field Diameter, Shadow Reduction, and Limited Heat/Irradiance. While the arguments and evidence presented in the HQ 965968 file do not mention these specific characteristics, there is evidence that the lamps are only used in the dental setting attached to dental chairs and meet the broad definition of apparatus used to aid the dentist in diagnosing disease. Hence, the merchandise is classified in heading 9018, HTSUS.

HOLDING:

At GRI 1, the "X-Calibur-HLU" dental light and the "Clesta Dental Lights," Models 501 (AL-501T), 2530 and 2535 are classified in heading 9018, HTSUS. Specifically, at GRI 6, the merchandise is classified in subheading 9018.49.80, the provision for "Instruments and appliances used in medical, surgical, dental or veterinary sciences, including scintigraphic apparatus, other electro-medical apparatus and sight-testing instruments; parts and accessories thereof: Other: Other." The column 1 general rate of duty is "free".

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.usitc.gov.*

EFFECT ON OTHER RULINGS:

Headquarters Ruling Letter (HQ) 965968, dated December 16, 2002, is hereby revoked.

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

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

HQ H032829F JC
CLA-2 OT:RR:CTF:TCM

MS. JUDITH HAGGIN
J.L. HAGGIN & ASSOCIATES CO.
1100 S.W. SIXTH AVE., SUITE 212
PORTLAND, OR 97204

RE: Modification of HQ H012677, dated February 15, 2008; Classification of Aquatic Training Shoes

DEAR MS. HAGGIN:

As you are aware, on July 23, 2014, the U. S. Customs and Border Protection published a notice in the *Customs Bulletin* Volume 48, Number 29, proposing to modify Headquarters Ruling Letter (HQ) H012677, relating to the tariff classification of Aquatic Training Shoes. We are enclosing a copy of the General Notice of Modification, as well as HQ H032829 which modifies the above decision.

Please note that in accordance with section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), Headquarters Ruling Letter (HQ) H032829 will become effective 60 days after its publication in the *Customs Bulletin*. These documents appeared in the *Customs Bulletin* dated (enclosed). You may access the *Customs Bulletin* through our website, *www.cbp.gov*. Click on "Trade." Then below "Trade" click on "For the Trade Community." On the lower left-hand side, click on "Rulings and Legal Decisions." Then click on "Customs Bulletin and Decisions." Then click on "2014 Bulletins" and the desired issue.

Please do not hesitate to contact us should you have any additional questions.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Enclosures

HQ H178917F JC
CLA-2 OT:RR:CTF:TCM

MR. GREGORY JOHN BREAULT
IMPORT/EXPORT COMPLIANCE MANAGER
GAMESA WIND
400 GAMESA DRIVE
FAIRHILLS, PA 19030

RE: Reconsideration of New York Ruling Letter N090476; Classification of a wind turbine "Front Frame" from China

DEAR MR. BREAULT,

As you are aware, on July 23, 2014, the U. S. Customs and Border Protection published a notice in the *Customs Bulletin* Volume 48, Number 29, proposing to revoke New York Ruling Letter (NY) N090476, relating to the tariff classification of a wind turbine "Front Frame" from China. We are enclosing a copy of the General Notice of Revocation, as well as HQ H169057 which revokes the above decision.

Please note that in accordance with section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), Headquarters Ruling Letter (HQ) H169057 will become effective 60 days after its publication in the *Customs Bulletin*. These documents appeared in the *Customs Bulletin* dated (enclosed). You may access the *Customs Bulletin* through our website, *www.cbp.gov*. Click on "Trade." Then below "Trade" click on "For the Trade Community." On the lower left-hand side, click on "Rulings and Legal Decisions." Then click on "Customs Bulletin and Decisions." Then click on "2014 Bulletins" and the desired issue.

Please do not hesitate to contact us should you have any additional questions.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Enclosures

HQ H178917F JC
CLA-2 OT:RR:CTF:TCM

MR. JACK D. MLAWSKI
GALVIN & MLAWSKI
470 PARK AVENUE SOUTH
SUITE 200 – SOUTH TOWER
NEW YORK, NY 10016–6819

RE: Revocation of HQ 965968; classification of dental lamps

DEAR MR. MLAWSKI:

As you are aware, on July 30, 2014, the U. S. Customs and Border Protection published a notice in the *Customs Bulletin* Volume 48, Number 30, proposing to revoke Headquarters Ruling Letter (HQ) 965968, relating to the tariff classification of dental lamps. We are enclosing a copy of the General Notice of Revocation, as well as HQ H178917 which revokes the above decision.

Please note that in accordance with section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), Headquarters Ruling Letter (HQ) H178917 will become effective 60 days after its publication in the *Customs Bulletin*. These documents appeared in the *Customs Bulletin* dated (enclosed). You may access the *Customs Bulletin* through our website, *www.cbp.gov*. Click on "Trade." Then below "Trade" click on "For the Trade Community." On the lower left-hand side, click on "Rulings and Legal Decisions." Then click on "Customs Bulletin and Decisions." Then click on "2014 Bulletins" and the desired issue.

Please do not hesitate to contact us should you have any additional questions.

Sincerely,

MYLES B. HARMON,
Director
Commercial and Trade Facilitation Division

Enclosures

U.S. Court of Appeals for the Federal Circuit

VICTORIA'S SECRET DIRECT, LLC, Plaintiff-Appellant, v. UNITED STATES, Defendant-Appellee.

Appeal No. 2013–1468

Appeal from the United States Court of International Trade in No. 07-CV-0347, Chief Judge Timothy C. Stanceu.

LERNER NEW YORK, INC., Plaintiff-Appellant, v. UNITED STATES, Defendant-Appellee.

Appeal No. 2013–1469

Appeal from the United States Court of International Trade in No. 07-CV-0361, Chief Judge Timothy C. Stanceu.

Dated: Decided: October 16, 2014

Frances P. Hadfield, Grunfeld, Desiderio, Lebowitz, Silverman & Klestadt LLP, of New York, New York, argued for plaintiffs-appellants. With her on the brief were *Alan R. Klestadt* and *Robert B. Silverman*. Of counsel was *Robert Fleming Seely*.

Beverly A. Farrell, Trial Attorney, International Trade Field Office, Commercial Litigation Branch, Civil Division, United States Department of Justice, of New York, New York, argued for defendant-appellee. With her on the brief were *Stuart F. Delery*, Assistant Attorney General, *Jeanne E. Davidson*, Director, and *Amy M. Rubin*, Acting Assistant Director.

Before MOORE, REYNA, and TARANTO, *Circuit Judges.*

Opinion for the court filed by *Circuit Judge* TARANTO.

Dissenting Opinion filed by *Circuit Judge* REYNA.

TARANTO, *Circuit Judge.*

These related actions, which the Court of International Trade tried together, require the classification of certain clothing under the Harmonized Tariff Schedule of the United States (HTSUS). Specifically at issue are the Bra Top, which is imported by Victoria's Secret Direct, LLC, and the Bodyshaper, which is imported by Lerner New York, Inc. Both are sleeveless garments, made of knit fabric, worn as tops. Both are designed for two purposes, body coverage and bust support, providing enough of each for a wide range of women to wear them in a wide range of public settings without needing a garment on top or a separate brassiere underneath. The Court of International Trade classified them under heading 6114 of the HTSUS, which covers "[o]ther garments, knitted or crocheted." *Lerner New York, Inc. v.*

United States, 908 F. Supp. 2d 1313 (Ct. Int'l Trade 2013) ("*Lerner*"); *Victoria's Secret Direct, LLC v. United States*, 908 F. Supp. 2d 1332 (Ct. Int'l Trade 2013) ("*Victoria's Secret*").

Victoria's Secret and Lerner contend that the garments should have been classified under heading 6212, which covers "[b]rassieres, girdles, corsets, braces, suspenders, garters *and similar articles* and parts thereof." (Emphasis added). We reject classification of these items under heading 6212. The Bra Top and Bodyshaper are not "similar articles" under heading 6212 because they do not possess the unifying characteristics of the listed items in that heading. In this appeal, once heading 6212 is ruled out, the Bra Top and the Bodyshaper must be classified under heading 6114. And once heading 6114 is chosen, there is no dispute about which subheading applies to each garment. We therefore affirm the judgment of the Court of International Trade.

BACKGROUND

A

Both Victoria's Secret's Bra Top and Lerner's Bodyshaper were designed to be a combination of two garments: a camisole, which is similar to a tank top in covering the body from the waist to above the bust, but generally with narrower shoulder straps and a lower neckline; and a brassiere. The Bra Top and the Bodyshaper both contain a "shelf bra": an interior layer of fabric—whose upper edge is attached to the camisole and whose lower edge is an elastic band not attached to the camisole—that provides bust support, though to a lesser degree than many (though not all) brassieres. *See, e.g., Victoria's Secret* at 1339 n.7. This combination garment is "known in the apparel industry as a 'shelf bra camisole,'" a single garment designed so that many women will wear it in ordinary public settings without a layering garment on top or a separate brassiere underneath. *Id.* at 1340, 1343; *Lerner* at 1321, 1323.

"A shelf bra camisole is designed for two purposes, coverage and support." *Victoria's Secret* at 1343; *Lerner* at 1323. As to coverage, it has not been disputed here that the Bra Top and the Bodyshaper cover portions of the wearer's upper body for warmth and modesty. *See, e.g.,* Victoria's Secret J.A. 746 (plaintiffs' joint, post-trial proposed findings of fact, recognizing that both products are "garment[s] worn above the waist" whose "function . . . is to provide modesty or warmth"). The Court of International Trade made findings to that effect, stating that "[t]he uncontested facts establish that the [Bra Top and the Bodyshaper] provide[] partial covering of the wearer's torso for warmth and modesty." *Victoria's Secret* at 1355; *Lerner* at

1327; *see also Lerner* at 1321 ("One of the purposes of the Bodyshaper is to provide modesty to the wearer."). The degree of coverage is more than that provided by a "brassiere," as the term is ordinarily used, and the coverage is sufficient that the garment is designed generally to be worn in public without layers over the garment. *See Victoria's Secret* at 1341 ("Victoria's Secret markets the Bra Top as a wardrobe 'essential' that can be worn by itself as a top."); *Lerner* at 1321 ("The Bodyshaper is intended to be worn in public.").

As to body support, the parties disputed the degree to which—though not the fact that—the Bra Top and the Bodyshaper serve that purpose. Ultimately, the Court of International Trade found that the Bra Top and the Bodyshaper are "designed to provide support to the bust of the wearer" and in fact "provide[] a certain degree of such support when worn." *Victoria's Secret* at 1344; *Lerner* at 1324. The court found that, for both products, the "cup, underbust band, and straps all work together to provide support to the wearer's bust" "in a manner identical to that of soft-cup brassieres." *Victoria's Secret* at 1343–44; *Lerner* at 1323. Because the garments provide some level of built-in support, "a separate brassiere . . . need not be worn underneath" the Bra Top or the Bodyshaper. *Victoria's Secret* at 1343; *Lerner* at 1323.

Victoria's Secret and Lerner, in marketing the Bra Top and Bodyshaper, emphasized the dual purposes of coverage *and* support. For example, the Court of International Trade found that "'[m]ost important' to Victoria's Secret, from 'a merchandising perspective,' is that the Bra Top provides the wearer '[t]he support of a bra and the use of a top in one.'" *Victoria's Secret* at 1341; *see also id.* at 1341–42 ("Victoria's Secret brought the Bra Top into its assortment 'because it was a top that provided support in lieu of a bra.'"). Similarly, the court found that "Lerner's website marketing materials for the Bodyshaper depict the garment being worn with pants or a skirt, and often with no layering garment being worn over the Bodyshaper," *Lerner* at 1320, and Lerner also identifies the "shelf-bra" aspect in marketing the Bodyshaper, Lerner J.A. 631.

B

Lerner imported a shipment of Bodyshapers in 2005, and Victoria's Secret imported a shipment of Bra Tops in 2006. The Bureau of Customs and Border Protection (CBP) classified Victoria's Secret's Bra Tops under subheading 6109.10.00 of the HTSUS, which has a 16.5% duty rate and covers "T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton." On the other hand, CBP classified Lerner's Bodyshapers under subheading 6114.30.10, which

has a 10.8% duty rate. The Explanatory Notes to the HTSUS describe heading 6114—which reads, "Other garments, knitted or crocheted"—as a residual provision that "covers knitted or crocheted garments which are not included more specifically in the preceding headings of this Chapter." Explanatory Note 61.14.

Victoria's Secret and Lerner each protested under 19 U.S.C. § 1514, and CBP denied both protests. On November 21, 2007, the companies filed separate suits in the Court of International Trade, each contending that its merchandise should have been classified under subheading 6212.90.00, which has a 6.6% duty rate and reads:

> 6212: Brassieres, girdles, corsets, braces, suspenders, garters and similar articles and parts thereof, whether or not knitted or crocheted:
>
> * * *
>
> 6212.90.00: Other.

In the alternative, the two companies argued for classification under heading 6114.

The Court of International Trade—"[d]ue to the presence of common issues of fact," *Victoria's Secret* at 1337; *Lerner* at 1317—tried the cases together during a three-day bench trial. On May 1, 2013, the court issued an opinion and judgment in each case, classifying the Bra Top and the Bodyshaper under the residual garment provision, heading 6114. The court's analysis in each opinion proceeded in three steps, considering, in turn, whether the merchandise should be classified under the tank-top provision (heading 6109), the brassiere provision (heading 6212), and the residual garment provision (heading 6114).

The court first rejected the government's argument that the garments should be classified under heading 6109 as "tank tops" or as an article "similar" to "T-shirts, singlets, [and] tank tops." *Victoria's Secret* at 1351; *see Lerner* at 1325–26. The government does not appeal the court's determination that the Bra Top and the Bodyshaper are not properly classified under heading 6109. That heading therefore is not at issue in this appeal.

The Court of International Trade next addressed the brassiere provision, heading 6212, concluding that neither the Bra Top nor the Bodyshaper is "a garment of a type that is properly classified under heading 6212, HTSUS, being dissimilar to the garments listed in the article description with respect to the essential characteristic and as to purpose." *Victoria's Secret* at 1355; *Lerner* at 1328. The court examined the text of the heading, finding that "[a]ll of the exemplars

in the heading 6212 article description—brassieres, girdles, corsets, braces, suspenders, and garters—have as their essential characteristic and purpose either support of a part of the body or support of a garment." *Victoria's Secret* at 1354; *Lerner* at 1327. Turning to the merchandise at issue, the court then found that, although the Bra Top and the Bodyshaper do "provide[] bust support," "it would be inconsistent with facts the court found in this case to conclude that support is *the* essential characteristic or purpose of" either garment. *Victoria's Secret* at 1354; *Lerner* at 1327 (emphasis in original in both opinions). The court added that it could not conclude that either the Bra Top or the Bodyshaper "*on the whole* is 'similar' to a brassiere or to any other garment or article named in the heading." *Victoria's Secret* at 1355; *Lerner* at 1328 (emphasis in original in both opinions). The court therefore rejected classification of the merchandise under heading 6212.

Having found classification improper under the tank-top provision and the brassiere provision, the Court of International Trade classified the Bra Top and the Bodyshaper under particular subheadings within heading 6114, the residual garment provision. Because the Bra Top is a blend of 95% cotton and 5% spandex, the court classified it under subheading 6114.20.00, which has a 10.8% duty rate for garments that come under heading 6114 and are made "[o]f cotton." *Victoria's Secret* at 1359–60. Because the Bodyshaper is a blend of two synthetic fibers, nylon and spandex, the court classified it under subheading 6114.30.10, which has a 28.2% duty rate for garments that come under heading 6114 and consist of "[t]ops" "[o]f man-made fibers." *Lerner* at 1332.

Victoria's Secret and Lerner timely appealed to this court, each arguing that its respective shelf bra camisole is "similar" to the items listed in heading 6212— "[b]rassieres, girdles, corsets, braces, suspenders, [and] garters"—and should therefore be classified as a "similar article[]" under the heading. This court has jurisdiction under 28 U.S.C. § 1295(a)(5).

DISCUSSION

"Proper classification of goods under the HTSUS entails first ascertaining the meaning of specific terms in the tariff provisions and then determining whether the subject merchandise comes within the description of those terms." *Millenium Lumber Distrib. Ltd. v. United States*, 558 F.3d 1326, 1328 (Fed. Cir. 2009). The first step presents an issue of law decided here de novo, the second an issue of fact subject to clear-error review. *See id.*

"The HTSUS scheme is organized by headings, each of which has one or more subheadings; the headings set forth general categories of merchandise, and the subheadings provide a more particularized segregation of the goods within each category." *Wilton Indus., Inc. v. United States*, 741 F.3d 1263, 1266 (Fed. Cir. 2013). "The classification of merchandise under the HTSUS is governed by the principles set forth in the [General Rules of Interpretation (GRIs)] and the Additional U.S. Rules of Interpretation." *Id.* We apply the GRIs in numerical order, *see CamelBak Prods., LLC v. United States*, 649 F.3d 1361, 1364 (Fed. Cir. 2011), so that if a particular Rule resolves the classification issue, we do not look to subsequent Rules, *see Lemans Corp. v. United States*, 660 F.3d 1311, 1316 (Fed. Cir. 2011).

GRI 1 provides that "classification shall be determined according to the terms of the headings and any relative section or chapter notes." This case involves two shelf-bra camisoles—Victoria's Secret's Bra Top and Lerner's Bodyshaper—each a single garment designed for two purposes, coverage and support, and generally worn in public without need for a layering garment on top or a separate brassiere underneath. *Victoria's Secret* at 1340, 1343; *Lerner* at 1321, 1323. We must decide if these garments are "similar articles" under heading 6212 of the HTSUS, which covers "[b]rassieres, girdles, corsets, braces, suspenders, garters and similar articles."

The parties agree that the term "similar" in this case expressly invokes the interpretive principle of *ejusdem generis*, and we proceed on that premise.[1] What is required is identification of the unifying properties of the items listed in heading 6212, an issue of heading interpretation that is a question of law. This is a matter of commonsense assessment of the particular list and what unifies the items in that list—which may be the presence of certain properties and the absence of others. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 207–08 (2012) ("Consider the listed elements, as well as the broad term at the end, and ask what category would come into the reasonable person's mind."); *see also* 2A Norman Singer & J.D. Shambie Singer, *Sutherland Statutory Construction* § 47:18 (7th ed. 2007) (*ejusdem generis* "rests . . . on practical insights about everyday language usage which guide our general understanding about when two things are alike or different" and is not "merely an abstract exercise in semantics and formal logic"). Applying the phrase "and similar articles" to the merchandise at

[1] When a general term ends a list of items in a statute, one circumstance in which the *ejusdem generis* principle does not apply to construing the general term is when the items "do not fit into any kind of definable category." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 209 (2012).

issue, then, requires determining whether the merchandise, considering all of its features, shares the unifying characteristics of the particular heading.

Avenues in Leather, Inc. v. United States, 178 F.3d 1241 (Fed. Cir. 1999), expresses this approach. "[F]or any imported merchandise to fall within the scope of the general term or phrase, the merchandise must possess the same essential characteristics or purposes that unite the listed examples preceding the general term or phrase." *Id*. at 1244. The first step is to "consider the common characteristics or unifying purpose of the listed exemplars in a heading." *Id.* The second is to consider the merchandise at issue with the identified unifying characteristics (or purpose) in mind. Classification of the merchandise within the heading "is appropriate only if" the merchandise shares the heading's unifying characteristics, and one way merchandise would fail to do so is by having "a more specific primary purpose that is inconsistent with the listed exemplars." *Id.*

Avenues in Leather confirms what is clear as a matter of common sense: the unifying characteristics may consist of both affirmative features and limitations. The reference to the merchandise's "primary purpose" as inconsistent with a particular heading's list recognizes that merchandise may well share affirmative features of the heading's list but have *other* features that then defeat "similarity"—necessarily meaning that the unifying characteristics of the heading's list include a limitation that excludes such other features (which may depend on their prominence). And, indeed, in referring to a purpose of the merchandise that is "inconsistent with" a heading's list, what the court in *Avenues in Leather* cited were cases that involved purposes that readily could be *added to* the affirmative functions of the listed items. The additional purpose of the merchandise at issue in those cases could be deemed "inconsistent" only because a limitation on function or purpose was among the heading's unifying characteristics. *Id.* at 1244, citing *SGI, Inc. v. United States*, 122 F.3d 1468, 1472 (Fed. Cir. 1997) (heading covering a variety of cases did not cover coolers for storing and carrying food or beverages); *Sports Graphics, Inc. v. United States*, 24 F.3d 1390, 1392–93 (Fed. Cir. 1994) (similar for pre-HTSUS heading of Tariff Schedule of the United States (TSUS)). The court's observation that the "analysis must consider the imported merchandise as a whole" reinforces the point: even if the merchandise at issue contains certain features shared by those listed in a heading, the presence of other features in the merchandise "as a whole" may negate similarity. *Avenues in Leather*, 178 F.3d at 1246.

What characteristics unify a heading's list—including what features are present in the listed items and what limits there are on the presence of other features— depends on the particular heading. For heading 6212, a tissue here, we conclude that what unifies the list is that all of the listed items have support as their paramount function (whether for the body or for some other garment). "Brassieres, girdles, corsets, braces, suspenders, [and] garters" all share that characteristic. They provide body or other-garment support and do so as their paramount function; in particular, the primacy of that function is not overridden by an additional outerwear coverage function so significant as to dominate or even to be of roughly the same importance as the support function. This is a matter of common-sense interpretation of the ordinary meaning of the terms of the heading, which confirms the limitation as well as the positive functionality. And the use of the full term "similar *articles*" in heading 6212 indicates the need to compare the entire article at issue to those listed in the heading to determine if the article as a whole, considering all of its features and functions, shares the unifying characteristic of those listed—here, the paramount function of support.

A few examples confirm the limitation inherent in the heading 6212 list. Certain garments not listed in the heading provide body support, but could not reasonably be considered in the same category as "[b]rassieres, girdles, corsets, braces, suspenders, [and] garters." Many evening gowns, specifically backless gowns, have built-in bust support sufficient to make a separate brassiere unneeded. Yet it is not reasonable to say that an evening gown is a "similar article[]"—an article of clothing similar to a brassiere or the others listed in heading 6212—and Victoria's Secret and Lerner agreed at oral argument. *See* Oral Argument at 4:00–5:05. Likewise, some jeans are designed to flatten, trim, and lift certain parts of the body. Such a pair of jeans cannot reasonably be called a "similar article" under heading 6212—an article similar to "[b]rassieres, girdles, corsets, braces, suspenders, [and] garters."

The Court of International Trade made findings that establish that the articles here did not have support as their paramount function, without a comparably important outerwear coverage function. After finding that the Bra Top and the Bodyshaper are "designed to provide support to the bust of the wearer," *Victoria's Secret* at 1344; *Lerner* at 1324, the court concluded that "it would be inconsistent with facts the court found in this case to conclude that body support is *the* essential characteristic or purpose" of either garment. *Victoria's Secret* at 1354;

Lerner at 1327 (emphasis in original in both opinions). That finding must be understood in light of the series of findings about the dual functions of the garments, including prominently the function of outerwear coverage as a top. *E.g.*, *Victoria's Secret* at 1339–42; *Lerner* at 1319–21. And the court summed up its findings by saying that it could not conclude that either the Bra Top or the Bodyshaper "*on the whole* is 'similar' to a brassiere or to any other garment or article named in the heading." *Victoria's Secret* at 1355; *Lerner* at 1328 (emphasis in original in both opinions). The essence of these findings is that these dual-function garments have too much of the nonsupport function to share "*the* essential characteristic" of the items listed in heading 6212.

The evidence supports the finding that the Bra Top and the Bodyshaper do not share the unifying characteristic of heading 6212. The Court of International Trade noted the evidence, and none of the parties dispute, that both garments are "designed for two purposes, coverage and support." *Victoria's Secret* at 1343; *Lerner* at 1323. There was ample evidence that each garment is meant to be wearable in public without needing an additional layer. *See Victoria's Secret* at 1341 ("Victoria's Secret markets the Bra Top as a wardrobe 'essential' that can be worn by itself as a top."); *Lerner* at 1321 ("The Bodyshaper is intended to be worn in public."). Victoria's Secret and Lerner, in marketing their garments, gave at least comparable prominence to the ordinary outerwear coverage function as to the support function. *See Victoria's Secret* at 1341 ("'Most important' to Victoria's Secret, from 'a merchandising perspective,' is that the Bra Top provides the wearer '[t]he support of a bra and the use of a top in one.'" (alteration in original)); *Lerner* at 1320 ("Lerner's website marketing materials for the Bodyshaper depict the garment being worn with pants or a skirt, and often with no layering garment being worn over the Bodyshaper.").

Our precedents in this area show that the inquiry requires an analysis of particular headings and particular merchandise. In *Avenues in Leather*, the relevant unifying characteristics of HTSUS heading 4202 (as it then read) were, simply, "organizing, storing, protecting, and carrying various items." 178 F.3d at 1245. The merchandise at issue there had those characteristics and did not have anything else "inconsistent" with any limitation found inherent in the 4202 list. *Id.* On the other hand, the merchandise did not come under HTSUS heading 4820 because the unifying characteristics of *that* heading were such as to preclude an item with "prominen[t] . . . organizing, carrying, and storing features," and only possible writing-related features in some configurations. *Id.* at 1245–46.

Earlier, in *Totes, Inc. v. United States*, 69 F.3d 495 (Fed. Cir. 1995), this court had similarly interpreted heading 4202 of the HTSUS as having "organizing, storing, protecting, and carrying various items" as unifying characteristics. *Id.* at 498. The merchandise at issue, a "rectangular case used to organize and store items such as motor oil, tools, and jumper cables in an automobile trunk," *id.* at 496, was "not removed from classification under [heading 4202] simply because it [was] intended to organize, store, and protect items associated with a motor vehicle," *id.* at 498. Distinguishing *Sports Graphics*, *supra*, a case decided under the TSUS, the court tied its discussion to the particular merchandise at issue and whether it had a specific purpose inconsistent with any limitation inherent in heading 4202. 69 F.3d at 498–99.

Sports Graphics, *supra*, had held that the merchandise at issue was not a "like article[]" under the TSUS provision (close to HTSUS heading 4202), because the merchandise "ha[d] a different purpose"—not merely a more specific one—than the listed examples. 24 F.3d at 1393. And in *SGI*, *supra*, decided after *Totes*, this court reiterated that the same conclusion applied to (the then-current language of) heading 4202 of HTSUS, finding that coolers for containing food and beverages were not "similar containers" under that heading. 122 F.3d at 1472–73. As in the present case, a purpose of the merchandise at issue was inconsistent with the heading because the unifying characteristics inherently limited the presence of certain purposes, over and above requiring certain purposes. *See id.*

This heading-specific approach is especially appropriate under the HTSUS. In *JVC Co. of America v. United States*, 234 F.3d 1348 (Fed. Cir. 2000), we rejected a pre-HTSUS "doctrine" the courts had created that imposed a reading on all listings of a certain sort (the so-called "more than" doctrine), rather than discerning the natural meaning of the words of each particular listing. *Id.* at 1353–54. We reasoned that such judicially imposed "rules of interpretation" were not proper under the HTSUS, which supplies its own defined principles of interpretation. *Id.* The lesson is that the analysis of what is "similar" under a heading depends on what is listed in that particular heading. The task is language interpretation in context, not judicial imposition by doctrine. *Cf. Northwest, Inc. v. Ginsberg*, 134 S. Ct. 1422, 1432–33 (2014) (in contract-law setting, distinguishing doctrine imposing result from context-specific interpretation). Our heading-specific analysis performs the required interpretive task.

For those reasons, we reject Victoria's Secret's and Lerner's challenges to the Court of International Trade's holding that the Bra Top and the Bodyshaper are outside heading 6212. That conclusion ends

this appeal. Heading 6109, though once at issue in these cases, no longer is. There is no basis for rejecting the residual provision, heading 6114, once headings 6212 and 6109 are rejected. And Victoria's Secret and Lerner do not dispute the choice of subheadings if heading 6114 applies.

CONCLUSION

We affirm the judgment of the Court of International Trade.

AFFIRMED

VICTORIA'S SECRET DIRECT, LLC, Plaintiff-Appellant, v. UNITED STATES, Defendant-Appellee.

Appeal No. 2013–1468

Appeal from the United States Court of International Trade in No. 07-CV-0347, Chief Judge Timothy C. Stanceu.

LERNER NEW YORK, INC., Plaintiff-Appellant, v. UNITED STATES, Defendant-Appellee.

Appeal No. 2013–1469

Appeal from the United States Court of International Trade in No. 07-CV-0361, Chief Judge Timothy C. Stanceu.

REYNA, *Circuit Judge*, dissenting.

The majority reaches its decision by rewriting the fundamental principles of a long established doctrine of statutory construction and by invoking an approach for classification of articles that this court soundly overruled. The majority's analysis invokes a "sounds right to me" approach that is decidedly at odds with established rules of tariff classification interpretation established by law and followed by this court. For this and other reasons set forth below, I respectfully *dissent*.

I

When Congress adopted the Harmonized Tariff Schedule of the United States ("HTSUS") in 1988, it explicitly provided that HTSUS provisions "shall be considered to be statutory provisions of law for all purposes." The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, § 1204(c), 102 Stat. 1107, 1149. Included within the HTSUS is a "statutorily-prescribed, comprehensive, and systematic method of classification" known as the General Rules of Interpretation ("GRI"). *JVC Co. of Am. v. United States*, 234 F.3d 1348, 1354 (Fed. Cir. 2000); *see also* Pub. L. No. 100–418, § 1204(a). Under GRI 1, classification decisions must be made "according to the terms of the headings and any relative section or chapter notes[.]" GRI 1. Thus, in tariff classification cases, we are required by statute to begin with the heading that most closely resembles the imported product and construe the terms in that heading "according to their common and commercial meanings." *Kahrs Int'l, Inc. v. United States*, 713 F.3d 640, 644 (Fed. Cir. 2013).

The majority deviates from this statutorily-mandated method of classification by rewriting the canon of statutory construction known

as *ejusdem generis*, which limits the scope of general terms or phrases to items that are similar to those specifically enumerated in the statute. *Christopher v. SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2171 n.19 (2012). Although the majority does not reverse the trial court's decision, it essentially sidesteps the trial court's extensive factual findings and rejects its analysis in favor of an unduly narrow construction of the *ejusdem generis* principle. The majority improperly focuses on an article's "paramount" function instead of its essential characteristics and, in doing so, violates the precept that *ejusdem generis* should not be invoked to "narrow, limit or circumscribe an enactment." *Sandoz Chem. Works, Inc. v. United* States, 50 CCPA 31, 35 (1963).

The principle of *ejusdem generis* provides that general terms and phrases should be limited to matters "similar in type to those specifically enumerated." *Fed. Maritime Comm'n v. Seatrain Lines, Inc.*, 411 U.S. 726, 734 (1973) (citations omitted); *see also Paroline v. United States*, 134 S. Ct. 1710, 1721 (2014). In the tariff classification context, an imported article falls within the scope of a general term or phrase if it possesses the same essential characteristics that unite the listed exemplars. *See, e.g.*, *Deckers Corp. v. United States*, 532 F.3d 1312, 1316 (Fed. Cir. 2008). The Bureau of Customs and Border Protection ("Customs") has consistently classified imported articles *ejusdem generis* if the articles are "designed," "intended," or "principally used" in the same manner or fashion as the listed exemplars.[1]

The majority agrees with the trial court that the essential function unifying the exemplars listed in heading 6212 is to provide support to either the body or to some other garment. Maj. Op. at 11. The majority also does not take issue with the trial court's extensive factual findings showing that an essential feature of both the Bra Top and the Bodyshaper is to provide support. *See, e.g.*, *Victoria's Secret Direct, LLC v. United States*, 908 F. Supp. 2d 1332, 1340–45 (Ct. Int'l Trade 2013); *Lerner New York, Inc. v. United States*, 908 F. Supp. 2d 1313, 1320–24 (Ct. Int'l Trade 2013). The court summarized its findings with a principal finding of fact that both garments are "designed to provide support to the bust of the wearer" and that both garments do, in fact, provide "a certain degree of such support." *Victoria's Secret*, 908 F. Supp. 2d at 1345; *Lerner*, 908 F. Supp. 2d at 1324. The Government concedes on appeal that an essential purpose of the garments is to provide support. *Victoria's Secret* Appellee Br. 12; *Lerner*

[1] *See, e.g.*, Classification of a Support Garment from China or Australia, N253321 (Cust. & Border Prot. May 30, 2014); Classification of a Silk Capelet from China, HQ 967889 (Cust. & Border Prot. Feb. 1, 2006); Classification of Kidney or Back Belt, HQ 952827 (Cust. & Border Prot.Dec. 16, 1992).

Appellee Br. 11. Under *ejusdem generis*, these garments are therefore classifiable as "similar articles" under heading 6212 because they share the essential characteristics of the listed exemplars. Here, the inquiry should end.

The majority nevertheless fails to classify these garments under heading 6212 because it finds that support is, at best, coequal to the garments' coverage function. Maj. Op. at 11. The majority misconstrues our precedent, which holds that additional but not inconsistent characteristics do not prevent the *ejusdem generis* classification of an article. As we noted in *Avenues in Leather, Inc. v. United States*, once an article is found to share the essential characteristics of the listed exemplars, "only an inconsistent specific primary purpose will prevent classification under that heading." 178 F.3d 1241, 1245 (Fed. Cir. 1999). The presence of dual functions does not by itself prevent an imported article from being classified *ejusdem generis*, a principle recognized by Customs in its decisions. *See* Classification of Kidney or Back Belt, HQ952827 (Cust. & Border Prot. Dec. 16, 1992) (classifying a kidney and back belt under heading 6212 despite having the dual function of providing warmth and support). Hence, if support is in fact an essential characteristic of the Bra Top and Bodyshaper, the presence of an additional coverage or warmth function should not defeat their classification as "similar articles."

By allowing additional but not inconsistent features to trump similarity, the majority implicitly revives a tariff classification doctrine long found to be inapplicable to the HTSUS. Under the so-called "more than" doctrine, which arose under the old Tariff Schedule of the United States, an imported article that shares features of a listed exemplar is not classifiable under that heading if the article contains additional "non subordinate or coequal" functions or characteristics. *See, e.g.*, *Digital Equip. Corp. v. United States*, 889 F.2d 267, 268 (Fed. Cir. 1989); *Avenues in Leather*, 178 F.3d at 1245–46. We held in *JVC Co. of America v. United States* that the "more than" doctrine was supplanted by the General Rules of Interpretation and thus does not apply to cases arising under the HTSUS. 234 F.3d at 1354.

The majority nevertheless revives the "more than" doctrine by holding that the presence of additional features may negate similarity:

> The court's observation that the "analysis must consider the imported merchandise as a whole" reinforces the point: even if the merchandise at issue contains certain features shared by those listed in a heading, the presence of other features in the merchandise "as a whole" may negate similarity.

Maj. Op. at 11 (quoting *Avenues in Leather*, 178 F.3d at 1246). The majority further engages in a classic application of the "more than" doctrine by concluding that the Bra Top and Bodyshaper "have too much of the nonsupport function to share '*the* essential characteristic' of the items listed in heading 6212." Maj. Op. at 13. We held in *JVC Co. of America* that such an analysis is not proper under the HTSUS and explicitly overruled the portion of *Avenues in Leather* cited by the majority. 234 F.3d at 1353–54. The majority's decision thus contradicts our precedent allowing merchandise to be classifiable as a particular article even if it possesses additional features or functions.[2] Under the proper standard, the additional coverage function of the Bra Top and Bodyshaper cannot by itself defeat the garments' classification as "similar articles" under heading 6212.

II

The majority attempts to sidestep this precedent by reading an implicit limitation into the characteristics of the exemplars listed in heading 6212:

> [The listed exemplars] provide body or other-garment support and do so as their paramount function; in particular, the primacy of that function is not overridden by an additional outerwear coverage function so significant as to dominate or even to be of roughly the same importance as the support function.

Maj. Op. at 11. But by focusing its analysis on "paramount functions" instead of "essential characteristics," the majority is in effect rewriting the *ejusdem generis* principle. Our precedent requires an *ejusdem generis* analysis to compare the essential characteristics of listed exemplars with those of the imported article. The term "essential" is defined in Webster's Third New International Dictionary as "constituting an indispensable structure, core, or condition of a thing," and "may suggest that the matter in question involves the very essence, or being or real nature, of whatever is concerned." Webster's Third New Int'l Dictionary 777 (Unabridged ed. 2002). This definition does not preclude an article from having more than one "essential" characteristic. The term "paramount," on the other hand, is defined as "having a higher or the highest rank or authority" and "superior to all others." *Id.* at 1638. By definition, only one feature or function of an article can be "paramount." Hence, the majority im-

[2] Indeed, this is precisely the purpose of the "other" and the "all other" classification headings, to capture articles similar but neither identical to nor the same as the articles expressly identified by the heading or subheading.

properly narrows the *ejusdem generis* analysis by focusing on the "paramount function" of the listed exemplars instead of their essential characteristics.

The majority's assumption that the unifying characteristics of the listed exemplars inherently limit the presence of other features is also at odds with the exemplars themselves. Many of the listed exemplars, including brassieres, girdles, corsets, and garters, provide some level of coverage and warmth to the wearer. Changes in fashion also allow for some of these articles to be worn as outerwear. As Customs has recognized, "a garment which is otherwise designed and intended to provide support in the manner of a bra will not be precluded from classification as such *merely because it will be seen when worn.*" Classification of T-Back Sports Bras, HQ 951264 (Cust. & Border Prot. July 1, 1992) (emphasis added). Customs has noted that "it is now acceptable to let brassieres that have been embellished in some manner show under outerwear or even be worn by themselves." Classification of Decorated Brassiere, HQ 954488 (Cust. & Border Prot. Oct. 6, 1993). Hence, the majority errs when it concludes that the coverage function of the Bra Top and Bodyshaper is inconsistent with the essential support characteristic of the listed exemplars. Maj. Op. at 14–15.

The majority's reliance on anecdotal examples related to evening gowns and jeans is not helpful and does not support its finding of an inherent limitation in heading 6212. Maj. Op. at 12. The traditional *ejusdem generis* analysis would not require classification of evening gowns and jeans under this heading just because these garments happen to provide some support to the wearer. To be classifiable under this heading, the trial court would first need to make a factual finding that support is an essential characteristic—*i.e.*, a core and indispensable element—of the article and that the article does not have a more specific primary purpose that is inconsistent with those characteristics. Without such factual findings, the majority's hypotheticals are neither relevant nor illuminating.

In contrast to the majority's abstract examples, the trial court made extensive factual findings showing that an essential feature of the Bra Top and Bodyshaper is to provide support. *See, e.g.*, *Victoria's Secret*, 908 F. Supp. 2d at 1340–45; *Lerner*, 908 F. Supp. 2d at 1320–24. The court summarized its findings with a principal finding of fact that both garments are "designed to provide support to the bust of the wearer" and that both garments do, in fact, provide "a certain degree of such support." *Victoria's Secret*, 908 F. Supp. 2d at 1345; *Lerner*, 908 F. Supp. 2d at 1324. The majority does not find clear error in these findings and thus presumably admits that support is an

essential feature of these garments. Once such a finding is made, only an inconsistent specific primary purpose will remove the article from the general term. The majority fails to point to an inconsistent specific primary purpose of the garments, and the presence of a coequal coverage function consistent with the garments' support function does not defeat classification under heading 6212. The majority, in its failure to classify the Bra Top and Bodyshaper as "similar articles" under heading 6212, departs from the traditional *ejusdem generis* analysis and, in essence, rejects its application as an interpretive principle in classification cases.

III

In sum, the majority misconstrues the requirements of an *ejusdem generis* analysis, unduly limits the scope of general terms and phrases, and contradicts precedent by reviving a once-defunct doctrine of classification law. The majority's revision of the *ejusdem generis* requirements is more than a small change. Similar to changing the course of a nautical heading by a few degrees, a revision of tariff classification rules will oft lead to unintended destinations. Here, the majority's rewriting of the *ejusdem generis* principle will create unnecessary confusion in future classification cases and a high degree of unpredictability in the marketplace. For these reasons, I *dissent*.