

## **Court of Appeals for the Federal Circuit's (CAFC) Decision in Victoria's Secret Case Could Impact Tariff Classification of "Other Garments"**

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The Court of Appeals for the Federal Circuit (CAFC) recently affirmed the Court of International Trade's (CIT) decision classifying shelf bra camisoles under subheading 6114.20.00 of the Harmonized Tariff Schedule of the United States (HTSUS), which provides for "other garments" and has a 10.8 percent duty rate. This case could present duty-saving opportunities for importers if they have been classifying shelf bra camisoles under HTSUS subheading 6109.10.00 (the tariff classification previously assigned to these goods). On the other hand, this case may be a potential pitfall for importers that foreign source goods designed to be a combination of two garments.

*Victoria's Secret* contested U.S. Customs and Border Protection's (CBP) classification of its shelf bra camisoles under HTSUS subheading 6109.10.00, which provides for "T-shirts, singlets, tank tops and similar garments, knitted or crocheted: Of cotton" and has a 16.5 percent duty rate. Around the same time, Lerner filed a complaint contesting CBP's classification of its shelf bra camisoles under HTSUS subheading 6114.30.10. Both importers claimed their garments were properly classified under HTSUS subheading 6212.90.00 as "other brassieres and similar articles," which has a duty rate of 6.6 percent.

The CIT found that the shelf bra camisoles provide both support and coverage and held their proper classification to be under HTSUS subheading 6114.20.00 as "other garments." The CAFC affirmed this decision, relying on an analysis of the word "similar" in HTSUS heading 6212. The CAFC found that "similar" requires the goods classified under that heading to have a "unifying characteristic." The "unifying characteristic" of the goods of heading 6212 was that they all had support as their paramount function. In contrast, the CAFC held that shelf bra camisoles did not have support as their paramount function, because they were meant for support and body coverage. Thus, the shelf bra camisoles were not classifiable under HTSUS heading 6212, but rather, under HTSUS heading 6114.

To the extent that your company imports shelf bra camisoles and has not taken advantage of this

potentially favorable classification change, there are still opportunities to do so with respect to past and current entries.

In addition, the CAFC's legal analysis in this case could impact your Company's classification regime for other types of garments (e.g., those for both body coverage and support) and potentially other categories of imports. Usually, a tariff provision will cover an enhanced or improved version of the named goods. Based on the Victoria's Secret decision, however, an imported apparel article that combines functions or attributes classified in multiple headings may now fall within an "other" heading if one function is not paramount. Likewise, this precedent could be applied in instances involving entirely different types of imported goods that are classified under similar tariff provisions.

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