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**Duty Refund Opportunity for Importers of Certain Apparel and Footwear**

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On March 31, 2011, the Court of International Trade (“CIT”) designated a new “test” case contesting the duty rates assessed on importations of certain apparel and footwear items.<sup>1</sup> The basis for the claim is that the duty rates for one gender are higher than the duty rates for the other gender for the same category of goods. The contention is that it is unconstitutional to have such a distinction based on gender. (e.g. women’s leather upper footwear is dutiable at 10% where as men’s leather upper footwear is dutiable at 8.5%). The litigation of the new test case is likely to determine the outcome of all other pending gender cases.

Our firm continues to remain active on the steering committee and plans to file an amicus brief to assist the court to reach the correct result. Any action filed in court can claim refunds of excess duties paid within two years before the court action is commenced. The potential refunds which may result from this case can be substantial and will only be available to importers who commence court actions to protect their rights.

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<sup>1</sup> In March 2010, the appellate court affirmed the trial court decision in Totes-Isotoner Corporation v. United States (the test case) which dismissed the complaint filed in the test case since it determined that it was not adequate. The court further directed the importer to amend its complaint in order to continue this action. Rather than amend its complaint, the importer appealed the trial court decision and was unsuccessful. All of the importers who have filed similar court actions which were stayed pending a decision in this first test case were permitted to amend their complaints.

The gender- and age-specific tariff provisions at issue in these cases include the following:

- Men's Unlined Gloves of Horsehide or Cowhide;
- Overcoats, Car coats, Capes, Cloaks, Anoraks, Windbreakers, and similar articles\*;
- Suits, Ensembles, Suit-Type Jackets, Blazers, and Trousers\*;
- Men's Cotton Nightshirts, Pajamas, Bathrobes, and similar articles;
- Women's Cotton Briefs, Panties, Pajamas, Bathrobes, and similar articles;
- Manmade Fiber Swimwear\*;
- Women's Tracksuits and Ski Suits;
- Women's Leather Upper Footwear, and
- Women's Hat Forms, Bodies and Hoods.

\* Some provisions favor men and some favor women, depending on garment component materials and construction.

A detailed list of specific HTS headings, products and duty differences is available through our office. **Please contact us if you are interested in filing claims to protect your rights to potential refunds.**