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For Immediate Release

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NEW LAWSUIT CHALLENGES GENDER, AGE DISCRIMINATION IN CUSTOMS DUTY RATES

NEW YORK, NY (Jan. 5, 2007). A lawsuit filed today in the United States Court of International Trade (CIT) raises the unique and unprecedented question of whether Customs duty rates that discriminate on the basis of gender and age violate the equal protection provisions of the United States Constitution.

Neville Peterson LLP, a New York and Washington D.C. law firm specializing in customs and international trade matters, filed the case, *Totes-Isotoner Corporation v. United States*, Court No. 07-00001. The suit raises the issue of whether Customs duty rates for leather gloves, which are currently 14% *ad valorem* for men and just 12.6% *ad valorem* for women and children, unfairly discriminate on the basis of sex or age. The United States Supreme Court has repeatedly struck down discriminatory measures unless the government can show sufficient justification for the discrimination.

“This case is the tip of the iceberg,” said Curtis Knauss, a partner with the firm’s New York office. “There are numerous tariff rates that discriminate according to the sex or age of the person for whom the imported article is intended, particularly in the areas of apparel and footwear. We expect numerous importers and retailers will file their own constitutional challenges in the weeks to come.” Because the issue involves the constitutionality of a United States law, he said, importers can proceed to court on the issue without having to file protests with Customs against each of the duty assessments. “Importers can protect their rights by filing a single lawsuit, and capture at least two years of refunds,” Knauss noted.

The initial challenge, concerning duty rates for leather gloves, was selected because it frames the constitutional issue in clear terms. “Prior to 1993, all leather gloves were subject to duty at the same 14% rate, regardless of sex or age,” said John Peterson, a partner in the firm. “Then, during the Uruguay Round trade negotiations, the United States government offered a

reduction on duties for women's and childrens' leather gloves, while keeping the rate for men's gloves higher. It's difficult to see what justification existed in 1993 to begin discriminating in tariff rates on the basis of the sex or age of the person for whom the glove was intended." While the sex and age-based duty differentials for gloves are modest, he added, they are much greater for many other apparel and footwear articles. The firm estimates the economic impact of sexually discriminatory tariff rates at over \$250 million per year – the amount potentially recoverable by importers should lawsuits challenging discriminatory rates succeed.

"While the President conducts trade negotiations, he does so pursuant to power delegated by the Congress," said Michael Cone, an attorney in Neville Peterson's New York office. "The Congress ultimately enacts the law that imposes the duties. If Congress were to pass an excise tax on a product for men, but not the same product for women (or vice versa), it would be required to show an exceedingly persuasive justification why the discriminatory tax should not be struck down as unconstitutional. The same rationale applies to Customs duties. It's hard to see how duty rates that discriminate based on gender or age can be justified in today's legal environment."

The CIT, based in New York City, is a court of national jurisdiction that hears cases arising under the Customs and trade laws. It has previously held certain U.S. trade laws unconstitutional. In 1996, for example, it ruled that harbor maintenance taxes on exported merchandise violated the constitutional ban on export taxation – a decision unanimously upheld by the U.S. Supreme Court. More recently, it held that provisions of the controversial "Byrd Amendment," which distributes antidumping duties to domestic industries affected by dumping, violated the Constitution's equal protection guarantees to the extent that it provided distributions for domestic companies that supported antidumping petitions, while denying them to domestic producers who did not give such support.

"Nobody can predict how the CIT will rule on the issue of discriminatory tariffs," said Neville Peterson's Matt Shaw. "However, it's an important issue that deserves, and will certainly receive, a thorough and respectful review by the courts."*

* Additional background materials and briefing papers concerning the constitutional challenge are available from the firm.